

1 MARC J. WINTHROP -- State Bar No. 63218
2 mwinthrop@winthropcouchot.com
3 GARRICK A. HOLLANDER -- State Bar No. 166316
4 ghollander@winthropcouchot.com
5 **WINTHROP COUCHOT**
6 **PROFESSIONAL CORPORATION**
7 660 Newport Center Drive, Ste 400
8 Newport Beach, CA 92660
9 Telephone: (949) 720-4100
10 Facsimile: (949) 720-4111
11
12 General Insolvency Counsel for
13 Debtor and Debtor-in-Possession

10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SANTA ANA DIVISION**

14 In re:
15 WALLDESIGN, INC., a California
16 corporation,
17
18 Debtor and
19 Debtor-in-Possession.

Case No. 8:12-bk-10105 CB

Chapter 11 Proceeding

**DISCLOSURE STATEMENT DESCRIBING
CHAPTER 11 LIQUIDATING PLAN**

Disclosure Statement Approval Hearing:

Date: November 20, 2013

Time: 10:00 a.m.

Place: Courtroom 5D
411 W. Fourth Street
Santa Ana, CA 92701

Plan Confirmation Hearing:

Date: [To Be Set]

Time: _____

Place: Courtroom 5D
411 W. Fourth Street
Santa Ana, CA 92701

TABLE OF CONTENTS

	<u>PAGE</u>
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	
21	
22	
23	
24	
25	
26	
27	
28	

I.	INTRODUCTION.....	2
A.	Purpose of this Document.....	2
B.	Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing.....	3
1.	Time and Place of the Confirmation Hearing.....	4
2.	Deadline for Voting for or Against the Plan.....	4
3.	Deadline for Objecting to the Confirmation of the Plan.....	4
4.	Identity of Person to Contact for More Information Regarding the Plan.....	4
C.	Disclaimer.....	5
II.	DEFINITIONS AND RULES OF INTERPRETATION.....	5
III.	BACKGROUND.....	5
A.	Description and History of the Debtor’s Business.....	5
B.	Debtor’s Financial Difficulties and Events Leading to Chapter 11 Filing.....	6
C.	Secured Debt.....	6
D.	Management of the Debtor Before and After the Bankruptcy.....	7
E.	Members of the Committee.....	7
F.	Significant Events During the Bankruptcy.....	7
1.	Bankruptcy Proceedings.....	7
a.	Debtor’s Emergency Motion for Approval of Stipulation for Use of Cash Collateral.....	7
b.	Debtor’s Emergency Motion for Order Authorizing Payment and Honoring of Prepetition Payroll Obligations.....	8
c.	Debtor’s Motion to Appoint a Chief Restructuring Officer.....	8
d.	Motion to Sell Idle Assets.....	9
2.	Actual and Projected Recovery of Preferential or Fraudulent Transfers.....	9
3.	Procedures Implemented to Resolve Financial Problems.....	10
4.	Current and Historical Financial Conditions.....	10
5.	Preservation of Rights of Action Held by the Debtor’s Estate.....	10
III.	SUMMARY OF THE LIQUIDATING PLAN.....	11
A.	Unclassified Claims.....	11
1.	Administrative Expenses.....	11
2.	Priority Tax Claims.....	12
B.	Summary of Classifications of Claims and Interests.....	14
C.	Treatment of Classes Under the Plan.....	14
1.	Class 1 - Allowed Secured Claim of Comerica.....	15
2.	Class 2 - Allowed Secured Claim of VFS.....	15

TABLE OF CONTENTS

(Continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PAGE

3.	Class 3 - Allowed Secured Claim of Bello	15
4.	Class 4 - Any Allowed Priority Non-Tax Claim.....	15
5.	Class 5 - Allowed General Unsecured Claims.....	16
6.	Class 6 - Subordinated Claims.....	16
7.	Class 7 - Interests of the Debtor.....	16
D.	Plan Implementation	16
1.	Liquidation Trustee.....	16
2.	Establishment and Administration of Liquidation Trust Fund.....	17
3.	Distributions on Account of Allowed Claims.....	17
4.	Objections to Disputed Claims	17
5.	Prosecution of Causes of Action.....	18
6.	Enforcement of Rights, Claims and Remedies of the Debtor and the Estate	18
7.	Disposition of Liquidation Trust Assets	18
8.	Management of Liquidation Trust Assets.....	18
9.	Investigation of Debtor’s Assets and Properties/ Prosecution of Causes of Action Against the Debtor and/or Insiders and Affiliates of the Debtor.....	18
10.	Liquidation Trust Assets	19
11.	Distribution from Liquidation Trust Fund	19
12.	Representative of the Estate.....	19
13.	Causes of Action	20
a.	Liquidation Trustee’s Right to Prosecute Causes of Action	20
b.	LT Advisory Board’s Right to Prosecute Causes of Action	20
E.	Distributions.....	21
F.	Litigation.....	21
1.	Authorization to Assert Causes of Action	21
2.	Evaluation of Causes of Action	21
3.	Bar Date for Filing Avoidance Action Payment Claims.....	22
G.	Executory Contracts and Unexpired Leases.....	22
H.	Claim Objections	22
1.	Liquidation Trustee’s Right to Object to Disputed Claims	22
2.	LT Advisory Board’s Right to Make Demand for Filing Objection to Disputed Claims.....	22
3.	Deadline to Object to Claims.....	23
I.	Risk Factors	24

TABLE OF CONTENTS

(Continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PAGE

J.	Tax Consequences of Plan	24
1.	Recognition of Gain or Loss Generally	25
2.	Distributions in Payment of Accrued But Unpaid Interest	27
3.	Tax Treatment of the Liquidation Trust and Holders of Beneficial Interests Therein	27
4.	Withholding	31
IV.	CONFIRMATION REQUIREMENTS AND PROCEDURES.....	31
A.	Who May Vote or Object.....	32
1.	Who May Object to Confirmation of the Plan.....	32
2.	Who May Vote to Accept/Reject the Plan	32
a.	What Is an Allowed Claim/Interest.....	32
b.	What Is an Impaired Claim/Interest	33
3.	Who Is <u>Not</u> Entitled to Vote	33
4.	Who Can Vote in More Than One Class	34
5.	Votes Necessary to Confirm the Plan	34
6.	Votes Necessary for a Class to Accept the Plan	34
7.	Treatment of Nonaccepting Classes.....	34
B.	Liquidation Analysis	35
C.	Feasibility.....	36
V.	EFFECT OF CONFIRMATION OF PLAN.....	36
A.	Discharge	36
B.	Injunction	37
C.	Release	37
D.	Distribution of Property Free and Clear of Liens, Claims, and Interests	38
E.	Binding Effect of Plan	38
F.	Transfer of Assets	38
G.	Reservation of Rights.....	38
VI.	MISCELLANEOUS PROVISIONS	38
A.	Post-Confirmation Conversion/Dismissal	38
B.	Final Decree	39

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

I.

INTRODUCTION

The Debtor has prepared a Plan after extensive review and analysis of all options available to the estate's creditors based on the rights and remedies available to the Debtor and its Creditors. Attached as Exhibit "4" is the Plan proposed by the Debtor. The Committee is in agreement with a liquidating trust, and is reviewing this Disclosure Statement. The Debtor anticipates filing a Joint Plan with the Committee. All Creditors should refer to Articles IV - V of the Plan for the precise treatment of their claims. This Disclosure Statement is explanatory only; the language used in the Plan is binding. **Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one.**

The Plan provides for the liquidation of assets of the estate. The Debtor is the party proposing the Plan sent to you in the same envelope as this document (and also attached as Exhibit "4" to this Disclosure Statement. **THE DOCUMENT YOU ARE READING IS THE DISCLOSURE STATEMENT FOR THE ENCLOSED PLAN.**

The Plan is a liquidating plan. In other words, the Debtor seeks to accomplish payments under the Plan to holders of Allowed Administrative Claims and Class 1 - Class 5 Claims by the distribution of all cash on hand, together with net proceeds realized from the litigation of claims held by the Estate and liquidation of any other assets.

A. Purpose of This Document.

This Disclosure Statement summarizes the Plan and provides certain information about the plan process that the Bankruptcy Court will follow in determining whether to confirm the Plan. The purpose of this Disclosure Statement is to provide information to enable a typical creditor to make an informed judgment about the Plan and to enable such creditor to determine whether it is in its best interest to vote for (accept) or against (reject) the Plan.

READ THIS DISCLOSURE STATEMENT CAREFULLY IF YOU WANT TO KNOW ABOUT:

(1) WHO CAN VOTE OR OBJECT;

- 1 (2) **WHAT THE TREATMENT OF YOUR CLAIM IS (i.e., what your**
- 2 **claim will receive if the Plan is confirmed);**
- 3 (3) **HOW THIS TREATMENT COMPARES TO WHAT YOUR CLAIM**
- 4 **WOULD RECEIVE IN A CHAPTER 7 LIQUIDATION;**
- 5 (4) **THE HISTORY OF THE DEBTOR AND SIGNIFICANT EVENTS**
- 6 **DURING THE BANKRUPTCY;**
- 7 (5) **WHAT THINGS THE COURT WILL LOOK AT TO DECIDE**
- 8 **WHETHER TO CONFIRM THE PLAN;**
- 9 (6) **WHAT IS THE EFFECT OF PLAN CONFIRMATION; AND**
- 10 (7) **WHETHER THE PLAN IS FEASIBLE.**

11 This Disclosure Statement cannot tell you everything about your rights. You should
12 consider consulting your own lawyer to obtain more specific advice on how the Plan will affect
13 you and what is the best course of action for you.

14 Be sure to read the Plan as well as the Disclosure Statement. If there are any
15 inconsistencies between the Plan and the Disclosure Statement, the Plan provisions will govern.

16 The Bankruptcy Code requires a Disclosure Statement to contain “adequate information”
17 concerning the Plan. The Court has approved this document as an adequate Disclosure
18 Statement, containing enough information to enable parties affected by the Plan to make an
19 informed judgment about the Plan. Any party can now solicit votes for or against the Plan.

20 **B. Deadlines for Voting and Objecting; Date of Plan Confirmation Hearing.**

21 THE COURT HAS NOT YET CONFIRMED THE PLAN DESCRIBED IN THIS
22 DISCLOSURE STATEMENT. IN OTHER WORDS, THE TERMS OF THE PLAN ARE NOT
23 YET BINDING ON ANYONE. HOWEVER, IF THE COURT LATER CONFIRMS THE PLAN,
24 THEN THE PLAN WILL BE BINDING ON THE DEBTOR AND ON ALL CREDITORS AND
25 INTEREST HOLDERS IN THIS CASE.

26 ///

27

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. Time and Place of the Confirmation Hearing.

The hearing where the Bankruptcy Court will determine whether or not to confirm the Plan will take place on _____, at _____, in Courtroom 5D, 411 West Fourth Street, Santa Ana, CA 92701.

2. Deadline for Voting for or Against the Plan.

If you are entitled to vote, it is in your best interest to timely vote on the enclosed ballot and return the ballot to:

Winthrop Couchot Professional Corporation
660 Newport Center Drive, Fourth Floor
Newport Beach, CA 92660
Facsimile: (949) 720-4121
Attn: PJ Marksbury

Your ballot must be received by 4:00 p.m., Pacific Time, on _____, or it will not be counted. Ballots may be returned via facsimile to the above number.

3. Deadline for Objecting to the Confirmation of the Plan.

Objections to the confirmation of the Plan must be filed with the Bankruptcy Court and served upon counsel for the Debtor, Garrick A. Hollander, Esq., at Winthrop Couchot Professional Corporation, 660 Newport Center Drive, Fourth Floor, Newport Beach, CA 92660, facsimile number (949) 720-4121; on counsel for the Official Committee of Unsecured Creditors (the "Committee"), Sidney P. Levinson, Esq., at Jones, Day, 555 South Flower Street, Fiftieth Floor, Los Angeles, CA 90071, facsimile number (213) 243-2539; and on the Office of the United States Trustee, Attn: Nancy Goldberg, Esq., 411 West Fourth Street, Ninth Floor, Santa Ana, CA 92701, by 4:00 p.m. on _____.

4. Identity of Person to Contact for More Information Regarding the Plan.

Any interested party desiring further information about the Plan should contact the Debtor's counsel, Garrick A. Hollander, Esq., at Winthrop Couchot Professional Corporation, 660 Newport Center Drive, Fourth Floor, Newport Beach, California 92660, (949) 720-4100. Alternatively, any interested party may contact the counsel to the

1 Committee, Sidney P. Levinson, Esq., at Jones Day, 555 South Flower Street, Fiftieth
2 Floor, Los Angeles, CA 90071, (213) 489-3939.

3 **C. Disclaimer.**

4 All assets of the Debtor have been or will be liquidated to cash. Further, the Debtor no
5 longer operates its business. Accordingly, the Disclosure Statement describes a liquidating plan
6 and therefore is not based upon financial data concerning the Debtor. The information contained
7 in this Disclosure Statement as well as the financial information upon which the Plan is formulated
8 was provided by Brian Weiss, the Debtor's Chief Restructuring Officer. The Debtor represents
9 that everything stated in the Disclosure Statement is true to the Debtor's best knowledge. The
10 Court has not yet determined whether the Plan is confirmable and makes no recommendation as to
11 whether or not you should support or oppose the Plan.

12 The Debtor and its professionals have made a diligent effort to identify in this Disclosure
13 Statement all litigation claims, including claims for relief, counterclaims, and objections to claims.
14 However, no reliance should be placed on the fact that a particular litigation claim is or is not
15 identified in the Disclosure Statement. The Debtor, Committee, or other parties in interest may
16 seek to investigate, file and prosecute litigation claims after the confirmation or Effective Date of
17 the Plan whether or not the litigation claims are identified in the Disclosure Statement.

18 **II.**

19 **DEFINITIONS AND RULES OF INTERPRETATION**

20 For definitions and rules of interpretation of capitalized terms used in this Disclosure
21 Statement, see the Plan attached hereto as Exhibit "4."

22 **III.**

23 **BACKGROUND**

24 **A. Description and History of the Debtor's Business.**

25 Founded and incorporated in 1983, the Debtor had been in the business of installing
26 drywall, insulation, plaster and providing related services to single and multifamily construction
27 projects throughout California, Nevada and Arizona for almost thirty years. Customers included
28

1 some of the largest homebuilders in the United States, such as Pulte, DR Horton, K. Hovnanian,
2 Toll Brothers and KB Homes.

3 The Debtor's business had grown consistently throughout its history and was profitable
4 until 2010. Walldesign had grown its sales to as high as \$239.4 million in 2006. The Debtor's
5 headquarters were located in Newport Beach, California with satellite offices in eight (8) locations
6 in California, Arizona and Nevada. Michael Bello was the Chief Executive Officer and is the sole
7 shareholder of the Debtor.

8 **B. Debtor's Financial Difficulties and Events Leading to Chapter 11 Filing.**

9 The global credit crisis that occurred in the third quarter of 2008 had a severe negative
10 impact upon the Debtor's business: capital for construction projects dried up, buyers vacated the
11 market for new homes profit margins on new jobs eroded, significant increases in workers'
12 compensation insurance rates (due to high loss run rates) and there were several customers that
13 went bankrupt. As a result, the Debtor experienced significant year-over-year sales declines.
14 Sales in 2008, 2009, 2010, and 2011 declined to \$108.3 million, \$72.4 million, \$61.9 million, and
15 \$43.5 million, respectively. Although the Debtor had significantly downsized its operations in an
16 effort to remain profitable given the recessionary conditions, cash flow problems arose during this
17 process. Furthermore, as a result, the Debtor was not in compliance with the covenants on its loan
18 agreement with Comerica, and payments to vendors were slowed, which precipitated collection
19 lawsuits. These actions ultimately forced the Debtor to file for relief under chapter 11 of title 11 of
20 the United States Code (the "Bankruptcy Code") on January 4, 2012 (the "Petition Date").

21 **C. Secured Debt.**

22 Comerica was the Debtor's primary secured creditor, holding blanket liens on the Debtor's
23 assets. As of the Petition Date, the Debtor owed Comerica approximately \$4.9 million pursuant to
24 a line of credit, plus corporate credit card debt, potential letter of credit liability, and fees and
25 expenses as permitted by the loan documents. During the course of this case, through the Debtor's
26 collections on account receivables and other payments from Debtor's insider guarantor (Bello
27 and/or one of his affiliates), the Debtor believes that substantially, if not all, of this debt has been
28 satisfied.

1 VFS holds a secured claim against a jet aircraft previously owned by the Debtor. Since the
2 Petition Date, VFS has obtained relief from the automatic stay and the Debtor is informed that
3 VFS is in the process of trying to liquidate the aircraft.

4 Bello and Bello Construction assert against certain assets of the estate secured claims in the
5 amounts of \$190,000 and \$142,000, respectively. The Debtor has not yet verified documents to
6 evidence these claims.

7 **D. Management of the Debtor Before and After the Bankruptcy.**

8 The Debtor's corporate officers as of the Petition Date consisted of Michael Bello as
9 President and Chief Executive Officer. During the bankruptcy, after issues and concerns were
10 raised by the Committee and acknowledged by the Bankruptcy Court, the Committee and the
11 Debtor stipulated to having Brian Weiss of BSW & Associates serve as the Debtor's Chief
12 Restructuring Officer. BSW & Associates served as the financial advisor to the Debtor prior to the
13 appointment of Brian Weiss as Chief Restructuring Officer. On May 15, 2013, Mr. Bello resigned
14 as an officer and director of the Debtor.

15 **E. Members of the Committee.**

16 On January 26, 2012, the Office of the United States Trustee formed an Official Committee
17 of Creditors Holding Unsecured Claims ("Committee"). The current members of the Committee
18 are: (1) Foam Concepts, Inc.; (2) Foam Designs, LLC; (3) Frazee Paint; (4) The Chartis
19 Companies; and (5) Painters & Allied Trades, District Council 15. The Committee acts as a
20 fiduciary for all general unsecured creditors of the Debtor.

21 **F. Significant Events During the Bankruptcy.**

22 **1. Bankruptcy Proceedings.**

23 The following is a chronological description of some of the significant events
24 that have occurred during this case:

25 **a. Debtor's Emergency Motion for Approval of Stipulation for**
26 **Use of Cash Collateral.**

27 In order to preserve its business operations, fulfill significant ongoing
28 contractual obligations and to maximize the value of its assets, including cash

1 collateral, the Debtor required the immediate use of cash collateral to pay labor
2 costs, overhead expenses and to fund prospective material purchases. To that end,
3 the Debtor entered into a stipulation with Comerica Bank, the Debtor's primary
4 secured lender for the Debtor's use of cash collateral. After extensive negotiations
5 with the Committee on the terms of the stipulation for use of cash collateral, and
6 multiple hearings on same, on April 11, 2012, the Bankruptcy Court entered a
7 Final Order Approving the Stipulation Authorizing the Debtor to Use Cash
8 Collateral.

9 **b. Debtor's Emergency Motion for Order Authorizing Payment**
10 **and Honoring of Prepetition Payroll Obligations.**

11 As of the date of the filing of the Chapter 11 petition, the Debtor required
12 the services of its former employees to continue to perform services on the
13 Debtor's construction projects pursuant to a labor agreement with Imperial
14 Building Group, Inc.¹ in order to preserve and maintain its ongoing business
15 operations, and to meet the needs of its customers. In order to ensure that the
16 employees continued working on the Debtor's projects, the Debtor brought a
17 motion seeking authorization to pay the pre-petition wages owing. On January 17,
18 2012, the Bankruptcy Court entered its order authorizing the (i) payment of pre-
19 petition wage claims and honoring of benefits; (ii) reimbursement of ordinary
20 course pre-petition employment business expenses; and (iii) retention of prepetition
21 account(s).

22 **c. Debtor's Motion to Appoint a Chief Restructuring Officer.**

23 Based on Michael Bello's involvement and relationship with the Debtor,
24 the Official Committee of Creditors Holding Unsecured Claims (the "Committee")
25 had perceived and thus expressed concern over Michael Bello's ability to
26

27 ¹ Imperial was in the same business as Walldesign and was a company owned and operated by Steven Bello, who is
28 Michael Bello's son. The Debtor entered into the Labor Agreement with Imperial, effective January 1, 2012, pursuant
to which Imperial supplied employees to perform the work and services described in contracts to which the Debtor is a
party.

1 independently and objectively manage the Debtor business and bankruptcy as a
2 fiduciary to creditors. At a hearing held on March 7, 2012, the Bankruptcy Court
3 expressed similar concern.

4 In an effort to eliminate the Committee and Court of their concerns, the
5 Debtor agreed to appoint a Chief Restructuring Officer (“CRO”) to ensure the
6 Debtor’s continued honoring of its fiduciary duty in this case. The Debtor
7 proposed, and the Committee agreed, to have Brian Weiss serve as the Debtor’s
8 Chief Restructuring Officer. As Chief Restructuring Officer, Mr. Weiss was
9 responsible for managing and operating the Debtor’s business and overseeing the
10 administration of the bankruptcy case, including, without limitation, completing
11 the Debtor’s construction projects, collecting accounts receivable, managing all of
12 the Debtor’s assets and property, and developing an exit strategy for this
13 bankruptcy case. The Debtor filed a motion to approve the appointment of the
14 Brian Weiss as Chief Restructuring Officer. On May 7, 2012, the Bankruptcy
15 Court entered an order approving such appointment.

16 **d. Motion to Sell Idle Assets.**

17 In an effort to dispose of certain unnecessary personal property to provide
18 capital into the Debtor’s business to fund the completion of projects, while
19 maximizing the value of property that was declining, the Debtor filed a motion for
20 approval of the sale of and sale procedures for the sale of certain idle personal
21 property. On April 16, 2012, the court entered an order approving the motion.
22 Thereafter, the Debtor generated approximately \$700,000 from the sale of the idle
23 assets, of which approximately \$300,000 was actually unencumbered by any liens
24 of secured creditors, thereby creating a fund available for distributions to general
25 unsecured creditors.

26 **2. Actual and Projected Recovery of Preferential or Fraudulent**
27 **Transfers.**

28

1 Based on the Debtor's and Committee's review and analysis of potential
2 avoidance actions, the Committee has retained special counsel to file complaints for the
3 avoidance and recovery of preferential and/or fraudulent transfers, as identified in
4 Exhibit "1," which represents those actions that the Committee believes, in its business
5 judgment, after conducting a cost benefit analysis of pursuing such claims, are worth
6 pursuing.

7 **3. Procedures Implemented to Resolve Financial Problems.**

8 As stated above, the Plan does not contemplate the ongoing operations of the
9 Debtor. Rather, the Plan proposes to pay creditors from the cash proceeds from the sale
10 of the Debtor's assets and recoveries on any litigation. Accordingly, the implementation
11 of preventative procedures to solve operational financial problems of the Debtor is
12 inapplicable to this particular debtor.

13 **4. Current and Historical Financial Conditions.**

14 As previously noted, the Debtor is no longer an operating company. All of the
15 Debtor's assets have been sold. As a result, the Debtor therefore no longer generates
16 revenues. Based on the liquidation of the Debtor's business and current collections on its
17 receivables, the Debtor currently has approximately \$187,673² of cash on hand. The
18 estate will incur additional administrative expenses directly related to the objection to
19 claims, litigation of avoidance and other actions and confirmation and implementation of
20 the Plan, which will be paid before payment of unsecured claims.

21 **5. Preservation of Rights of Action Held by the Debtor's Estate.**

22 Except as provided in the Plan and in any contract, instrument, release or other
23 agreement entered into or delivered in connection with the Plan, including a Liquidating
24 Trust Agreement, in accordance with Section 1123(b) of the Bankruptcy Code, the
25 Liquidating Trustee, on behalf of the Debtor's estate, will retain and may enforce any
26

27 ² The Debtor believes that Comerica may assert a secured claim against \$120,298 of this cash based on an alleged
28 secured guaranty made by the Debtor to secure a debt of an Affiliate of the Debtor's insider. The Debtor believes that
this secured claim is avoidable as a fraudulent transfer, but anticipates not needing to file an avoidance action as the
Debtor believes that this claim will be paid off by the Affiliate that is the primary obligator on this alleged debt.

1 claims, demands, rights, objections to claims and any and all other causes of action that the
2 Debtor's estate may hold against any entity.

3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

IV.

SUMMARY OF THE LIQUIDATING PLAN

The following is a brief summary of the Plan and is qualified in its entirety by the full text of the Plan. The terms of the Plan will be controlling on the Creditors and the Debtors in the event that the Plan is confirmed. Therefore, the Debtors and all Creditors are urged to read the Plan carefully in its entirety rather than relying on this summary.

A. Unclassified Claims.

Pursuant to § 1123 of the Bankruptcy Code, certain types of claims are not placed into voting classes; instead they are unclassified. They are not considered impaired and they do not vote on the Plan, because they are automatically entitled to specific treatment provided for them in the Bankruptcy Code. As such, the Debtor has not placed the following claims in a class.

1. Administrative Expenses

Administrative expenses are claims for the expenses of administering the Debtor’s Chapter 11 case that are allowed under Bankruptcy Code § 507(a)(2). The Bankruptcy Code requires that all administrative claims be paid on the Effective Date of the Plan, unless a particular claimant agrees to a different treatment.

The following chart lists all of the Debtor’s § 507(a)(2) administrative claims (estimated through the Effective Date) and their treatment under the Plan:

Winthrop Couchot Professional Corporation, General Insolvency Counsel for Debtor	Estimated unpaid professional fees and costs through plan confirmation, of approximately \$220,000 ³	Paid in full on the later of the Effective Date or date of allowance
Jones Day	Estimated unpaid professional fees and costs through plan confirmation of approximately \$150,000 ⁴	Paid in full on the later of the Effective Date or date of allowance
BSW & Associates in its capacity of Financial Advisor and in Mr. Weiss’s capacity as Chief Restructuring Officer	Estimated unpaid professional fees and costs through plan confirmation of approximately \$90,000 ⁵	Paid in full on the later of the Effective Date or date of allowance

³ This does not include the approximate \$475,000 of fees and costs previously paid by the Debtor pursuant to the Bankruptcy Court’s orders approving cash collateral and monthly payment procedures.

⁴ This does not include the approximate 197,500 of fees and costs previously paid by the Debtor pursuant to the Bankruptcy Court’s orders approving cash collateral and monthly payment procedures.

⁵ This does not include the approximate \$164,500 of fees and costs previously paid by the Debtor pursuant to the

Various Administrative Creditors	Estimated non-professional administrative claims	Paid in full on the later of the Effective Date or date of allowance
U.S. Trustee Fees	Estimated fees to be paid through plan confirmation of approximately \$0.00	Paid in full on the later of the Effective Date or date of allowance
Total	Approx. \$460,000	

The Court must approve all professional fees listed in this chart before the fees will be paid. For all fees and expenses except U.S. Trustee’s fees, the professional in question must file and serve a properly noticed fee application and the Bankruptcy Court must rule on the application. Only the amount of fees and expenses allowed by the Bankruptcy Court will be required to be paid under the Plan.

2. Priority Tax Claims.

Priority tax claims are certain unsecured income, employment related expenses and other taxes described by Bankruptcy Code Section 507(a)(8). The Bankruptcy Code requires that each holder of such a 507(a)(8) priority tax claim receive the present value of such claim in deferred cash payments, over a period not exceeding five (5) years after the date of the order for relief.

The total claims of this nature asserted are estimated to be approximately \$46,758. The following chart lists all of the Debtor’s Section 507(a)(8) priority tax claims, and their proposed treatment under this Plan:

DESCRIPTION	AMOUNT OWED ⁶	TREATMENT
Internal Revenue Service <ul style="list-style-type: none"> • Type of tax: income • Date tax assessed: unknown 	\$29,833.86	Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment of its Allowed Priority Tax Claim, each holder of an Allowed Priority Tax Claim shall receive cash payments of a total value, as of the Effective Date, equal to the Allowed Priority Tax Claim over a period ending not later than five years after the order for relief with simple interest thereon

Bankruptcy Court’s orders approving cash collateral and monthly payment procedures..

⁶ The Debtor believes that these Claims may be overstated. Nothing contained herein shall be deemed a waiver or release of any party’s rights to object to the amount or classification of these priority Claims

DESCRIPTION	AMOUNT OWED ⁶	TREATMENT
Franchise Tax Board <ul style="list-style-type: none"> • Type of tax: income • Date tax assessed: unknown 	\$315.56	Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment of its Allowed Priority Tax Claim, each holder of an Allowed Priority Tax Claim shall receive cash payments of a total value, as of the Effective Date, equal to the Allowed Priority Tax Claim over a period ending not later than five years after the order for relief with simple interest thereon
Nevada Department of Taxation <ul style="list-style-type: none"> • Type of tax: income • Date tax assessed: unknown 	\$3,657.04	Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment of its Allowed Priority Tax Claim, each holder of an Allowed Priority Tax Claim shall receive cash payments of a total value, as of the Effective Date, equal to the Allowed Priority Tax Claim over a period ending not later than five years after the order for relief with simple interest thereon
Nevada Employment Security Division <ul style="list-style-type: none"> • Type of tax: income • Date tax assessed: unknown 	\$8,649.72	Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment of its Allowed Priority Tax Claim, each holder of an Allowed Priority Tax Claim shall receive cash payments of a total value, as of the Effective Date, equal to the Allowed Priority Tax Claim over a period ending not later than five years after the order for relief with simple interest thereon
State Board of Equalization <ul style="list-style-type: none"> • Type of tax: Sales • Date tax assessed: unknown 	\$3,973	Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment of its Allowed Priority Tax Claim, each holder of an Allowed Priority Tax Claim shall receive cash payments of a total value, as of the Effective Date, equal to the Allowed Priority Tax Claim over a period ending not later than five years after the order for relief with simple interest thereon
Employment Development Dept. <ul style="list-style-type: none"> • Type of tax: employment • Date tax assessed: 10/1/11 – 12/31/11 	\$42,405.99	Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment of its Allowed Priority Tax Claim, each holder of an Allowed Priority Tax Claim shall receive cash payments of a total value, as of the Effective Date, equal to the Allowed Priority Tax Claim over a period ending not later than five years after the order for relief with simple interest thereon
Department of Industrial Relations <ul style="list-style-type: none"> • Type of tax: income • Date tax assessed: unknown 	\$365.00	Except to the extent that a holder of an Allowed Priority Tax Claim agrees to a less favorable treatment of its Allowed Priority Tax Claim, each holder of an Allowed Priority Tax Claim shall receive cash payments of a total value, as of the Effective Date, equal to the Allowed Priority Tax Claim over a period ending not later than five years after the order for relief with simple interest thereon
Total	89,000.17 \$	

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

B. Summary of Classification of Claims and Interests.

As required by the Bankruptcy Code, the Plan places Claims and Interests into various classes according to their right to priority. The Plan states whether each class of Claims or Interests is impaired or unimpaired. The Plan provides the treatment each class will receive. The following table summarizes the Classes of Claims and the Interest established by the Plan:

CLASS	DESCRIPTION	IMPAIRED/ UNIMPAIRED	VOTING STATUS
Class 1	Allowed Secured Claim of Comerica	Unimpaired	No (deemed to accept)
Class 2	Allowed Secured Claim of VFS	Unimpaired	No (deemed to accept)
Class 3	Allowed Secured Claim of Bello and Bello Construction	Unimpaired	No (deemed to accept)
Class 4	Any Allowed Priority Non-Tax Claims	Impaired	Entitled to Vote on Plan
Class 5	Allowed General Unsecured Claims	Impaired	Entitled to Vote on Plan
Class 6	Subordinated Claims	Impaired	No (deemed to reject)
Class 7	Interests	Impaired	No (deemed to reject)

As set forth above, Classes 4 through 5 are impaired and receive property under the Plan; thus, any holders of Claims in these Classes are entitled to vote with respect to the Plan. The holders of Claims in Class 6 and Interests in Class 7 do not receive any property under the Plan and thus Classes 6 and 7 are deemed to reject the Plan. Accordingly, the holders of Claims and Interests in Classes 6 and 7 are not entitled to vote with respect to the Plan.

The treatment of Claims under the Plan is in full and complete satisfaction of the legal, contractual, and equitable rights that each Creditor has or may have against the Debtor or its property. This treatment supersedes and replaces any agreements or rights which those entities have against the Debtor or its property. **NO DISTRIBUTIONS SHALL BE MADE, AND NO RIGHTS SHALL BE RETAINED UNDER THE PLAN, ON ACCOUNT OF ANY CLAIM THAT IS NOT AN ALLOWED CLAIM**

C. Treatment of Classes Under the Plan.

The following is a summary of treatment of classes under the Plan:

1 1. Class 1 – Allowed Secured Claim of Comerica. Comerica shall retain,
2 without alteration or modification hereunder, its Lien encumbering the Debtor Collateral in
3 which Comerica has a Lien, and shall be paid from the liquidation of the Debtor Collateral
4 in which Comerica has a Lien. In the event that Comerica has the right to assert against the
5 Debtor any Deficiency Claim, unless Comerica makes a valid election under
6 section 1111(b) of the Bankruptcy Code, any Allowed Deficiency Claim of Comerica shall
7 be treated as an Allowed Class 5 General Unsecured Claim.

8 2. Class 2 – Allowed Secured Claim of VFS. VFS shall retain, without
9 alteration or modification hereunder, its Lien encumbering the Debtor Collateral in which
10 VFS has a Lien, and shall be paid from the liquidation of the Debtor Collateral in which
11 VFS has a Lien. In the event that VFS has the right to assert against the Debtor any
12 Deficiency Claim, unless VFS makes a valid election under section 1111(b) of the
13 Bankruptcy Code, any Allowed Deficiency Claim of VFS shall be treated as an Allowed
14 Class 5 General Unsecured Claim.

15 3. Class 3 – Allowed Secured Claim of Bello. To the extent Bello
16 Construction has an Allowed Secured Claim that is not avoided and subordinated by the
17 anticipated action to be brought by the Committee or the Liquidation Trustee, Bello
18 Construction shall retain, without alteration or modification hereunder, its Lien
19 encumbering the Debtor Collateral in which Bello Construction has a Lien, and shall be
20 paid from the liquidation of the Debtor Collateral in which Bello Construction has a Lien.
21 In the event that Bello Construction has the right to assert against the Debtor any
22 Deficiency Claim, unless Bello Construction makes a valid election under section 1111(b)
23 of the Bankruptcy Code, any Allowed Deficiency Claim of Bello Construction shall be
24 treated as an Allowed Class 5 General Unsecured Claim.

25 4. Class 4 – Any Allowed Priority Non-Tax Claim. On the later of: (a) the
26 Effective Date; and (b) the fifteenth (15th) Business Day after such Priority Non-Tax
27 Claim becomes an Allowed Priority Non-Tax Claim, or, in either case, as soon thereafter as
28 is practicable, each holder of an Allowed Priority Non-Tax Claim shall receive in full

1 satisfaction, settlement, and release of and in exchange for such Allowed Priority Non-Tax
2 Claim, a pro rata share of the Class 4 Liquidation Trust Interests.

3 5. Class 5 – Allowed General Unsecured Claims. On the later of: (a) the
4 Effective Date; and (b) the fifteenth (15th) Business Day after such General Unsecured
5 Claim becomes an Allowed General Unsecured Claim, or, in either case, as soon thereafter
6 as is practicable, each holder of an Allowed General Unsecured Claim shall receive in full
7 satisfaction, settlement, and release of and in exchange for such Allowed General
8 Unsecured Claim, a pro rata share of the Class 5 Liquidation Trust Interests.

9 6. Class 6 – Subordinated Claims. Claims in Class 6 shall not receive any
10 property under the Plan and on the Effective Date shall be deemed to be satisfied, settled,
11 and released.

12 7. Class 7 –Interests of the Debtor. On the Effective Date, all Interests in the
13 Debtor shall be extinguished and the holders of such Interests shall not receive or retain
14 any property under the Plan on account of such Interests.

15 **D. Plan Implementation.**

16 On or soon as practicable after the Effective Date, the following shall occur with respect to
17 the implementation of the Plan: (a) all acts, documents and agreements appropriate to implement
18 the Plan shall be effected, executed and/or delivered; (b) the Liquidation Trust Agreement shall
19 become effective; and (c) the Liquidation Trustee shall make all Distributions required to be made
20 on or about the Effective Date of the Plan.

21 **1. Liquidation Trustee.**

22 On the Effective Date, Brian Weiss shall resign as Chief Restructuring Officer of
23 the Debtor, and simultaneously become the Liquidation Trustee to effectuate the Plan. The
24 LT Advisory Board shall have the right to replace the Liquidation Trustee, upon any
25 resignation of the Liquidation Trustee or for cause, and in accordance with the terms and
26 conditions of the Liquidation Trust Agreement. A notice identifying any such replacement
27 Liquidation Trustee shall be filed with the Bankruptcy Court and served upon the original
28 Liquidation Trustee, the United States Trustee and any Post-Effective Date Notice Parties.

1 Any objection that any party-in-interest may have to the identity of any such replacement
2 Liquidation Trustee shall be asserted, in writing, by any party-in-interest within seven (7)
3 days after the LT Advisory Board's filing and service of written notice of the proposed
4 appointment of such replacement Liquidation Trustee; if a party-in-interest fails to assert
5 timely any such objection, any such objection shall be deemed to have been waived. In the
6 event that an objection to any such replacement Liquidation Trustee is asserted timely, the
7 merits of such objection shall be determined by the Bankruptcy Court; the objecting party
8 shall have the burden of proof with respect to demonstrating the merits of any such
9 objection.

10 The Liquidation Trustee shall have the right to exercise on behalf of the holders of
11 Allowed Claims, inter alia, the following rights, powers, remedies and duties under the
12 Plan and the Liquidation Trust Agreement (in addition to any and all rights, powers,
13 remedies and duties reasonably necessary or appropriate to carry out the purpose and intent
14 of the Plan which are not inconsistent with the provisions of the Plan or the Liquidation
15 Trust Agreement):

16 **2. Establishment and Administration of Liquidation Trust Fund.**

17 The Liquidation Trustee shall establish, and shall be responsible for administering,
18 the Liquidation Trust Fund. The Liquidation Trustee may invest Cash in the Liquidation
19 Trust Fund as permitted by the guidelines promulgated by the United States Trustee and in
20 effect on the Effective Date.

21 **3. Distributions on Account of Allowed Claims.**

22 The Liquidation Trustee shall be responsible for making all Distributions to the
23 holders of Allowed Claims under the Plan in accordance with the provisions of the Plan.

24 **4. Objections to Disputed Claims.**

25 The Liquidation Trustee shall have the right to object to Disputed Claims in
26 accordance with the provisions of the Plan.

27
28

1 **5. Prosecution of Causes of Action.**

2 The Liquidation Trustee shall have the right to file and to prosecute Causes of
3 Action in accordance with the provisions of the Plan.

4 **6. Enforcement of Rights, Claims and Remedies of the Debtor and the**
5 **Estate.**

6 The Liquidation Trustee shall have the right to enforce, on behalf of the holders of
7 Allowed Claims, any and all rights, claims and remedies of the Debtor and the Estate.

8 **7. Disposition of Liquidation Trust Assets.**

9 From and after the Effective Date, the Liquidation Trustee shall be authorized and
10 directed to take any act and to execute any document appropriate to effectuate the transfer
11 of the Liquidation Trust Assets from the Debtor to the Liquidation Trustee, to be held by
12 the Liquidation Trustee in trust for the benefit of holders of Allowed Claims. The
13 Liquidation Trustee shall have the right to sell, grant, convey, assign, lease, encumber,
14 dispose of and otherwise transfer (as that term is defined in section 101(54) of the
15 Bankruptcy Code) any Liquidation Trust Assets, or any interest therein, in order to promote
16 the interests of holders of Allowed Claims, as the Liquidation Trustee deems advisable in
17 the exercise of its sole and absolute discretion subject only to the approval of the LT
18 Advisory Board with respect to any transaction in excess of \$50,000.00.

19 **8. Management of Liquidation Trust Assets.**

20 The Liquidation Trustee shall be entitled to manage, administer and to control
21 Liquidation Trust Assets in order to promote the interests of holders of Allowed Claims, as
22 the Liquidation Trustee deems advisable in the exercise of its sole and absolute discretion,
23 subject only to the approval of the LT Advisory Board.

24 **9. Investigation of Debtor's Assets and Properties/Prosecution of Causes**
25 **of Action Against the Debtor and/or Insiders and Affiliates of the**
26 **Debtor.**

27 The Liquidation Trustee shall have the right to investigate the Debtor's assets as of
28 the Effective Date, and, if appropriate, to assert any Cause of Action to recover for the

1 benefit of holders of Allowed Claims any asset or property of the Debtor transferred by the
2 Debtor, or not disclosed by the Debtor in the Bankruptcy Schedules or otherwise. The LT
3 Advisory Board shall have the right to investigate the acts and conduct of the Debtor,
4 transactions between the Debtor and an Insider of the Debtor, and transactions between the
5 Debtor and an Affiliate, and, if appropriate, to assert, on behalf of holders of Allowed
6 Claims, any Cause of Action with respect thereto. Notwithstanding anything in the Plan to
7 the contrary, the Insider Causes of Action shall be prosecuted in the name of the
8 Liquidation Trustee, but the LT Advisory Board shall have sole and exclusive authority and
9 shall make all decisions with respect to the commencement, prosecution, termination, or
10 settlement of the Insider Causes of Action. The Liquidation Trustee shall have no
11 oversight of, or approval rights with respect to, the prosecution and/or settlement of the
12 Insider Causes of Action, unless such authority is expressly delegated in writing to the
13 Liquidation Trustee by the LT Advisory Board.

14 **10. Liquidation Trust Assets.**

15 The Liquidation Trust shall hold title to the Liquidation Trust Assets and the
16 Liquidation Trust shall be administered solely by the Liquidation Trustee for the benefit of
17 the Beneficiaries.

18 **11. Distributions from Liquidation Trust Fund.**

19 Distributions to holders of Allowed Claims shall be solely from the Liquidation
20 Trust Fund, in accordance with the terms and conditions of the Plan.

21 **12. Representative of the Estate.**

22 Effective as of the Effective Date, the Liquidation Trustee shall be appointed as the
23 representative of the Estate pursuant to section 1123(b)(3)(B) of the Bankruptcy Code.
24 The Liquidation Trustee shall be vested exclusively with the rights, authorities and powers
25 to carry out and to implement the Plan, including, without limitation, by managing,
26 administering and disposing of the Liquidation Trust Assets for the benefit of holders of
27 Allowed Claims in accordance with the terms and conditions of the Plan. On the Effective
28 Date, the Liquidation Trust Assets shall be transferred to and shall vest in the Liquidation

1 Trustee to be managed, administered, controlled, liquidated, adjusted, settled, enforced,
2 collected or abandoned by the Liquidation Trustee in accordance with the terms and
3 conditions of the Plan.

4 **13. Causes of Action.**

5 **a. Liquidation Trustee's Right to Prosecute Causes of Action.**

6 Subject to the provisions of Section 6.14.3 of the Joint Plan, the right to file,
7 litigate, prosecute, settle, adjust, enforce, collect or abandon on behalf of the Debtor
8 and the Estate any and all Causes of Action, except the Insider Causes of Action, is
9 deemed automatically transferred on the Effective Date from the Debtor to the
10 Liquidation Trustee, and, from and after the Effective Date. Accordingly, the
11 Liquidation Trustee shall have the sole and exclusive right to file, litigate,
12 prosecute, settle, adjust, enforce, collect or abandon all Causes of Action other than
13 the Insider Causes of Action.

14 **b. LT Advisory Board's Right to Prosecute Insider Causes of**
15 **Action.**

16 The right to file, litigate, prosecute, settle, adjust, enforce, collect or
17 abandon on behalf of the Debtor and the Estate the Insider Causes of Action is
18 deemed automatically transferred on the Effective Date from the Debtor to the
19 Liquidation Trust from and after the Effective Date, provided, however, that only
20 the LT Advisory Board, and not the Liquidation Trustee, shall have the sole and
21 exclusive right to approve the filing, litigation, prosecution, settlement, adjustment,
22 enforcement, collection or abandonment of the Insider Causes of Action.

23 **THE DEBTOR AND COMMITTEE HAVE NOT COMPLETED THEIR**
24 **INVESTIGATION REGARDING THE EXISTENCE AND SCOPE OF CAUSES OF**
25 **ACTION. THE INVESTIGATION IN THIS REGARD IS ONGOING. AS A**
26 **RESULT, ALL PARTIES-IN-INTEREST ARE HEREBY ADVISED THAT,**
27 **NOTWITHSTANDING THE FACT THAT THE EXISTENCE OF ANY**
28 **PARTICULAR CAUSE OF ACTION MAY NOT BE LISTED, DISCLOSED OR**

1 **SET FORTH IN THE PLAN, A CAUSE OF ACTION MAY BE FILED AGAINST**
2 **ANY CREDITOR OR OTHER PARTY AS THE LIQUIDATION TRUSTEE MAY**
3 **DETERMINE, IN THE EXERCISE OF THEIR SOLE AND ABSOLUTE**
4 **DISCRETION.**

5 **E. Distributions.**

6 The Liquidation Trustee shall be responsible for making all Distributions to the holders of
7 Allowed Claims under the Plan. The Liquidation Trustee shall not be required to be bonded in
8 connection with the performance of the Liquidation Trustee's duties pursuant to the Plan.

9 **F. Litigation.**

10 **1. Authorization to Assert Causes of Action.**

11 From and after the Effective Date, the Liquidation Trust shall have the exclusive
12 right to file, litigate, prosecute, settle, adjust, enforce, collect and abandon the Insider
13 Causes of Action and all other Causes of Action, respectively, without the consent or
14 approval of any third party, and without any further order of the Bankruptcy Court, in
15 accordance with the provisions of Section 6 of the Plan.

16 **2. Evaluation of Causes of Action.**

17 The decision of the LT Advisory Board and/or the Liquidation Trustee as the case
18 may be to prosecute or to continue to prosecute the Insider Causes of Action and all other
19 Causes of Action, respectively, shall be based, in part, upon their respective evaluation of
20 the merits of the Insider Causes of Action and other Causes of Action, respectively, as well
21 as the costs required to prosecute such causes of action taking into account the resources
22 available to make Distributions to Creditors. Subject to the provisions of Section 6.14.2 of
23 the Plan, the LT Advisory Board and the Liquidation Trustee shall be entitled to determine,
24 in the exercise of their respective sole and absolute discretion, not to prosecute, or to
25 abandon, any Insider Causes of Action or other Causes of Action, respectively, which they
26 are each entitled to prosecute pursuant to Section 6.14 of the Plan.

27
28

1 **3. Bar Date for Filing Avoidance Action Payment Claims.**

2 Any Avoidance Action Payment Claim shall be forever barred, shall not be
3 enforceable against the Debtor, the Estate, the Liquidation Trustee or the Liquidation Trust
4 and shall not be entitled to any Distribution under the Plan, unless a Proof of Claim for
5 such Avoidance Action Payment Claim is filed and served on the Liquidation Trustee
6 within thirty (30) days after the later of (a) the date of entry of the order of the Bankruptcy
7 Court adjudging the Creditor’s liability to the Debtor or to the Liquidation Trust on account
8 of such Avoidance Action, or (b) the Effective Date.

9 **G. Executory Contracts and Unexpired Leases.**

10 See Section X of the Plan.

11 **H. Claim Objections.**

12 Based on the Debtor’s initial review and analysis of claims, the Debtor has filed many
13 significant objections to claims. **While not necessarily an exhaustive list**, attached as Exhibit “2”
14 is a list of claims to which the Debtor has objected and anticipates the Committee (pre-
15 confirmation) or Liquidating Trustee (post-confirmation) objecting.

16 **1. Liquidation Trustee’s Right to Object to Disputed Claims.**

17 Subject to the provisions of Section 8.1.2 of the Plan, the Liquidation Trustee shall
18 have the exclusive right to file, litigate, settle, adjust, enforce or abandon objections to any
19 and all Disputed Claims, including any objection seeking to subordinate a Disputed Claim
20 pursuant to Section 510 of the Bankruptcy Code.

21 **2. LT Advisory Board’s Right to Make Demand for Filing Objection to**
22 **Disputed Claims.**

23 Notwithstanding the rights of the Liquidation Trustee with respect to objecting to
24 Disputed Claims as set forth above in Section 8.1.1 of the Joint Plan, nothing in the Joint
25 Plan shall require the Liquidation Trustee to file or to prosecute an objection to any
26 Disputed Claim, both of which may be determined by the Liquidation Trustee in the
27 exercise of his sole and absolute discretion; provided, however, in the event that the
28 Liquidation Trustee fails to file an objection with respect to a Disputed Claim within one

1 hundred twenty (120) days after the Effective Date, the LT Advisory Board shall be entitled
2 thereafter to serve upon the Liquidation Trustee written demand that the Liquidation
3 Trustee file an objection with respect to such Disputed Claim. In the event that the
4 Liquidation Trustee fails to file an objection with respect to such Disputed Claim within
5 thirty (30) days after service of such written demand, unless otherwise ordered by the
6 Bankruptcy Court for good cause shown, the rights to prosecute, control, withdraw and
7 resolve such Disputed Claim shall be deemed to be transferred irrevocably and
8 unconditionally to the LT Advisory Board and the LT Advisory Board, then shall be
9 entitled exclusively to file, litigate, prosecute, settle, adjust, enforce, collect or abandon
10 such objection to the Disputed Claim, with any Net Recoveries that may be obtained in
11 connection with such objection to the Disputed Claim paid to the Liquidation Trust and
12 applied in accordance with the terms and conditions of the Joint Plan.

13 **THE COMMITTEE AND DEBTOR HAVE NOT COMPLETED THEIR**
14 **INVESTIGATION REGARDING THE EXISTENCE OF DISPUTED CLAIMS.**
15 **THE INVESTIGATION IN THIS REGARD IS ONGOING. AS A RESULT, ALL**
16 **PARTIES-IN-INTEREST ARE HEREBY ADVISED THAT,**
17 **NOTWITHSTANDING THE FACT THAT THE EXISTENCE OF ANY**
18 **PARTICULAR DISPUTED CLAIM MAY NOT BE LISTED, DISCLOSED OR**
19 **SET FORTH IN THE PLAN, SUBJECT ONLY TO THE CLAIMS OBJECTION**
20 **DEADLINE, AN OBJECTION MAY BE FILED TO ANY DISPUTED CLAIM AS**
21 **THE LIQUIDATION TRUSTEE MAY DETERMINE, IN THE EXERCISE OF**
22 **HIS SOLE AND ABSOLUTE DISCRETION. THE LIQUIDATION TRUSTEE**
23 **SHALL HAVE THE RIGHT TO OBJECT TO AMOUNTS THAT HAVE BEEN**
24 **SCHEDULED BY THE DEBTOR AND THAT ARE FOUND TO BE**
25 **OBJECTIONABLE IN ANY RESPECT.**

26 **3. Deadline to Object to Claims.**

27 Unless another date is established by order of the Bankruptcy Court, an objection
28 to a Claim must be filed with the Bankruptcy Court and served on the Creditor holding

1 such Claim on or before the Claims Objection Deadline. The Court may extend the
2 Claims Objection Deadline for cause shown.

3 **I. Risk Factors**

4 The projected percentage distribution to creditors is a function of the amount of cash
5 actually recovered and the amount of claims allowed against the Debtor. The Debtor's success
6 with respect to the claim objections will directly impact the amount paid out to holders of allowed
7 unsecured claims. However, the Debtor cannot yet determine the amount, if any, of cash available
8 to distribute, or the extent of claims to which it may object and the Court will sustain.

9 **J. Tax Consequences of Plan**

10 CREDITORS AND INTEREST HOLDERS CONCERNED WITH HOW THE PLAN
11 MAY AFFECT THEIR TAX LIABILITY SHOULD CONSULT WITH THEIR OWN
12 ACCOUNTANTS, ATTORNEYS, AND/OR ADVISORS.

13 **THE FOLLOWING SUMMARY IS FOR INFORMATIONAL PURPOSES ONLY**
14 **AND IS NOT A SUBSTITUTE FOR CAREFUL TAX PLANNING OR FOR ADVICE**
15 **BASED UPON THE PARTICULAR CIRCUMSTANCES PERTAINING TO A HOLDER**
16 **OF A CLAIM. EACH HOLDER OF A CLAIM OR INTEREST IS URGED TO CONSULT**
17 **ITS OWN TAX ADVISORS FOR THE U.S. FEDERAL, STATE, LOCAL AND FOREIGN**
18 **INCOME AND OTHER TAX CONSEQUENCES APPLICABLE TO IT UNDER THE**
19 **PLAN.**

20 *IRS Circular 230 Notice: To ensure compliance with IRS Circular 230, Holders of*
21 *Claims and Interests are hereby notified that: (a) any discussion of U.S. federal tax issues*
22 *contained or referred to in this Disclosure Statement is not intended or written to be used, and*
23 *cannot be used, by Holders of Claims and Interests for the purpose of avoiding penalties that*
24 *may be imposed on them under the Internal Revenue Code; (b) such discussion is written in*
25 *connection with the promotion or marketing by the Debtor of the transactions or matters*
26 *addressed herein; and (c) Holders of Claims and Interests should seek advice based on their*
27 *particular circumstances from an independent tax advisor. The following are consequences to*
28 *holders of priority non-tax claims and general unsecured claims:*

1 **1. Recognition of Gain or Loss Generally.**

2 Pursuant to the Plan, on the Effective Date, each Holder of an Allowed Priority
3 Non-Tax Claim or Allowed General Unsecured Claim against the Debtor will receive an
4 allocated Liquidation Trust Interest which is a beneficial interest in the Liquidation Trust,
5 entitling the Beneficiaries to distributions from the Liquidation Trust as provided for in the
6 Plan and in the Liquidation Trust Agreement. Except to the extent that the holder of any
7 such Allowed Priority Non-Tax Claim or Allowed General Unsecured Claim agrees to a
8 different treatment, said Persons will receive on account of their Allowed Priority Non-Tax
9 Claim or Allowed General Unsecured Claim a Class 4 Liquidation Trust Interest or a Class
10 5 Liquidation Trust Interest, respectively, in full and complete satisfaction thereof. Each
11 Beneficiary of the Liquidation Trust will be entitled to receive one or more Pro Rata
12 Distributions of the Net Liquidation Trust Proceeds based upon the amount of the
13 respective Holder's Allowed Priority Non-Tax Claim or Allowed General Unsecured
14 Claim. In general, each holder of an Allowed Priority Non-Tax Claim or Allowed General
15 Unsecured Claim will recognize gain or loss in an amount equal to the difference between
16 (i) the sum of the amount of any Cash and the fair market value of any other property that
17 such holder receives in satisfaction of its Claim (other than in respect of any Claim for
18 accrued but unpaid interest, and excluding any portion required to be treated as imputed
19 interest due to the post- Effective Date Distribution of such consideration upon the
20 resolution of Disputed Claims), and (ii) such holder's adjusted tax basis in its Claim (other
21 than any Claim for accrued but unpaid interest).

22 As discussed below, the Liquidation Trust has been structured to qualify as a
23 "grantor trust" for U.S. federal income tax purposes. Accordingly, each holder of an
24 Allowed Claim receiving a beneficial interest in the Liquidation Trust will be treated for
25 U.S. federal income tax purposes as directly receiving and as a direct owner of its allocable
26 percentage of the Liquidation Trust Assets. As set forth in the Liquidation Trust
27 Agreement, as soon as practicable after the Effective Date, and thereafter as may be
28 required, the Liquidation Trustee will (if reasonably deemed necessary or desirable by the

1 Liquidation Trustee) make or have caused to be made a good faith valuation of the Trust
2 Assets, and all parties, including the recipients of Liquidation Trust Interests must
3 consistently use such valuation for all federal income tax purposes.

4 Due to the possibility that each Beneficiary may receive more than one Distribution
5 subsequent to the Effective Date (due to the subsequent disallowance of certain Disputed
6 Claims or unclaimed Distributions), the imputed interest provisions of the Internal
7 Revenue Code may apply to treat a portion of such later Distributions to such holders as
8 imputed interest. In addition, it is possible that any loss realized by any Beneficiary may be
9 deferred until all subsequent Distributions relating to Disputed Claims are determinable,
10 and that a portion of any gain realized may be deferred under the “installment method” of
11 reporting. Each Beneficiary is urged to consult its own tax advisors regarding the
12 possibility for deferral, and the potential ability to elect out of the installment method of
13 reporting any gain realized in respect of its Claim.

14 After the Effective Date, any amount a holder receives as a Distribution from the
15 Liquidation Trust in respect of its beneficial interest therein (other than as a result of the
16 subsequent disallowance of Disputed Claims) should not be included for federal income
17 tax purposes in the holder’s amount realized in respect of its Allowed Claim, but should be
18 separately treated as a distribution received in respect of such holder’s beneficial
19 (ownership) interest in the Liquidation Trust.

20 Where a holder recognizes gain or loss in respect of its Claim, the character of such
21 gain or loss as long-term or short-term capital gain or loss or as ordinary income or loss
22 will be determined by a number of factors, including the tax status of the holder, whether
23 the Claim constitutes a capital asset in the hands of the holder and how long it has been so
24 held, whether the holder had acquired the Claim at a market discount, and whether and to
25 what extent the holder had previously claimed a bad debt deduction. A holder that
26 purchased its Claim from a prior holder at a market discount may be subject to the market
27 discount rules of the Internal Revenue Code. Under those rules, assuming that the holder
28 has made no election to amortize the market discount into income on a current basis with

1 respect to any market discount instrument, any gain recognized on the exchange of such
2 Claim (subject to a *de minimis* rule) generally would be characterized as ordinary income
3 to the extent of the accrued market discount on such Claim as of the date of the exchange.

4 In general, a holder's tax basis in any beneficial interest received (and undivided
5 interest in Liquidation Trust Assets deemed owned) will equal the fair market value of its
6 proportionate share of the Liquidation Trust Assets on the Effective Date. The holding
7 period for such assets generally will begin the day following the Effective Date.

8 **2. Distributions in Payment of Accrued But Unpaid Interest.**

9 Distributions to any Holder of an Allowed Claim will be allocated first to the
10 original principal portion of such Claim as determined for federal income tax purposes, and
11 then, to the extent the consideration exceeds such amount, to the portion of such Claim
12 representing accrued but unpaid interest. However, there is no assurance that the IRS
13 would respect such allocation for federal income tax purposes.

14 To the extent a holder of debt receives an amount of Cash or property in satisfaction
15 of interest accrued during its holding period, such holder generally recognizes taxable
16 interest income in such amount (if not previously included in the holder's gross income).
17 Conversely, a holder generally recognizes a deductible loss to the extent any accrued
18 interest claimed was previously included in its gross income and is not paid in full. Each
19 holder is urged to consult its tax advisor regarding the allocation of consideration and the
20 deductibility of unpaid interest for U.S. federal income tax purposes.

21 **3. Tax Treatment of the Liquidation Trust and Holders of Beneficial**
22 **Interests Therein.**

23 On the Effective Date, the Liquidation Trust will be established for the benefit of
24 the Beneficiaries. The Liquidation Trust is intended to qualify as a liquidation trust for
25 federal income tax purposes. In general, such a trust is not a separate taxable entity but
26 rather is treated for federal income tax purposes as a "grantor" trust (*i.e.*, a pass-through
27 entity). However, merely establishing a trust as a liquidation trust does not ensure that it
28 will be treated as a grantor trust for U.S. federal income tax purposes. The IRS, in

1 Revenue Procedure 94-45, 1994-2 C.B. 684, set forth the general criteria for obtaining an
2 IRS ruling as to the grantor trust status of a Liquidation Trust under a chapter 11 plan. The
3 Liquidation Trust has been structured with the intention of complying with such general
4 criteria. Pursuant to the Plan, and in conformity with Revenue Procedure 94-45, all parties
5 (including the Debtor, the Liquidation Trustee, and the Beneficiaries of the Liquidation
6 Trust) are required for federal income tax purposes to treat the Liquidation Trust as a
7 grantor trust of which the Persons receiving interests therein are the owners and grantors.
8 The following discussion assumes that the Liquidation Trust will be so respected for U.S.
9 federal income tax purposes. However, no ruling has been requested from the IRS and no
10 opinion of counsel has been requested concerning the tax status of the Liquidation Trust as
11 a grantor trust. Accordingly, there can be no assurance that the IRS would not take a
12 contrary position. If the IRS were to challenge successfully such classification, the federal
13 income tax consequences to the Liquidation Trust and the Beneficiaries could vary from
14 those discussed herein.

15 For all U.S. federal income tax purposes, all parties (including the Debtor, the
16 Liquidation Trustee, and the Beneficiaries) must treat the transfer of the Liquidation Trust
17 Assets to the Liquidation Trust, in accordance with the terms of the Plan and the
18 Liquidation Trust Agreement, as a transfer of such Liquidation Trust Assets directly to the
19 Beneficiaries, followed by such Beneficiaries' transfer of the Liquidation Trust Assets to
20 the Liquidation Trust. Consistent therewith, all parties must treat the Liquidation Trust as
21 a grantor trust of which the Beneficiaries are the owners and grantors. Thus, such
22 Beneficiaries will be treated as the direct owners of their respective undivided interests in
23 the Liquidation Trust Assets for all U.S. federal income tax purposes. Each such Person
24 will have a tax basis in its proportionate share of the Liquidation Trust Assets deemed
25 owned equal to the fair market value thereof on the Effective Date. As set forth in the
26 Liquidation Trust Agreement, as soon as practicable after the Effective Date, and thereafter
27 as may be required, the Liquidation Trustee will (if reasonably deemed necessary or
28 desirable by the Liquidation Trustee) make or have caused to be made a good faith

1 valuation of the Liquidation Trust Assets, and all parties, including the Beneficiaries, must
2 consistently use such valuation for all federal income tax purposes.

3 The Debtor believes that the foregoing income tax treatment may result in the
4 recognition of large losses by most Holders of Allowed Priority Non-Tax Claims or
5 Allowed General Unsecured Claims when the Liquidation Trust is created and receives the
6 Liquidation Trust Assets. The value of the assets to be transferred to the Liquidation Trust
7 has not yet been finally determined, but it may be substantially less than the aggregate face
8 amount of the Claims. If so, each Holder of an Allowed Priority Non-Tax Claim or
9 Allowed General Unsecured Claim is likely to realize a loss in an amount equal to that of
10 such Holder's tax basis, minus the value of the assets transferred to the Liquidation Trust.
11 If a Beneficiary's tax basis in its Allowed Priority Non-Tax Claim or Allowed General
12 Unsecured Claim is less than its Pro Rata share of the value of the assets transferred to the
13 Liquidation Trust, that Beneficiary may actually have taxable income equal to the value
14 minus its tax basis.

15 Accordingly, except as discussed below (in connection with pending Disputed
16 Claims), each recipient of a Liquidation Trust Interest will be required to report on its U.S.
17 federal income tax return its allocable share of any income, gain, loss, deduction, or credit
18 recognized or incurred by the Liquidation Trust, in accordance with its relative beneficial
19 interest. The character of items of income, deduction, and credit to any holder and the
20 ability of such holder to benefit from any deduction or losses may depend on the particular
21 situation of such holder.

22 The U.S. federal income tax reporting obligations of a holder is not dependent upon
23 the Liquidation Trust distributing any Cash or other proceeds. Therefore, a holder may
24 incur a federal income tax liability with respect to its allocable share of the income of the
25 Liquidation Trust regardless of the fact that holder has not received any prior or concurrent
26 Distribution. Other than in respect of Cash retained on account of Disputed Claims and
27 subsequently distributed, the Liquidation Trust's Distribution of Cash to Beneficiaries
28

1 generally will not be taxable to said Beneficiaries because they already are regarded for
2 federal income tax purposes as owning the underlying Liquidation Trust Assets.

3 Subject to the Liquidation Trust Agreement, absent definitive guidance from the
4 IRS or a court of competent jurisdiction to the contrary (including the issuance of
5 applicable Treasury Regulations, the receipt by the Liquidation Trustee of a private letter
6 ruling if the Liquidation Trustee so requests one, or the receipt of an adverse determination
7 by the IRS upon audit if not contested by the Liquidation Trustee), the Liquidation Trustee
8 will:

9 a. treat all Liquidation Trust Assets allocable to, or retained on account
10 of, Disputed Claims, as a discrete trust for federal income tax purposes, consisting
11 of separate and independent shares to be established in respect of each Disputed
12 Claim, in accordance with the trust provisions of the Internal Revenue Code
13 (sections 641 *et seq.* of the Internal Revenue Code);

14 b. treat as taxable income or loss of this separate trust with respect to
15 any given taxable year the portion of the taxable income or loss of the Liquidation
16 Trust that would have been allocated to the holders of such Disputed Claims had
17 such Claims been Allowed on the Effective Date (but only for the portion of the
18 taxable year with respect to which such Claims are unresolved);

19 c. treat as a distribution from this separate trust any increased amounts
20 distributed by the Liquidation Trust as a result of any Disputed Claim resolved
21 earlier in the taxable year, to the extent such distribution relates to taxable income
22 or loss of this separate trust determined in accordance with the provisions hereof,
23 and

24 (iv) to the extent permitted by applicable law, report consistently for
25 state and local income tax purposes.

26 In addition, pursuant to the Liquidation Trust Agreement, all Beneficiaries are
27 required to report consistently with such treatment. Accordingly, subject to issuance of
28 definitive guidance, the Liquidation Trustee will report on the basis that any amounts

1 earned by this separate trust and any taxable income of the Liquidation Trust allocable to it
2 are subject to a separate entity level tax, except to the extent such earnings are distributed
3 during the same taxable year. Any amounts earned by or attributable to the separate trust
4 and distributed to a Beneficiary during the same taxable year will be includible in such
5 Beneficiary's gross income.

6 **4. Withholding.**

7 All Distributions to Holders of Allowed Priority Non-Tax Claims or Allowed
8 General Unsecured Claims are subject to any applicable tax withholding, including
9 employment tax withholding. Under federal income tax law, interest, dividends, and other
10 reportable payments may, under certain circumstances, be subject to "backup withholding"
11 at the then applicable withholding rate (currently 28%). Backup withholding generally
12 applies if the holder (a) fails to furnish its social security number or other taxpayer
13 identification number ("TIN"), (b) furnishes an incorrect TIN, (c) fails properly to report
14 interest or dividends, or (d) under certain circumstances, fails to provide a certified
15 statement, signed under penalty of perjury, that the TIN provided is its correct number and
16 that it is not subject to backup withholding. Backup withholding is not an additional tax
17 but merely an advance payment, which may be refunded to the extent it results in an
18 overpayment of tax. Certain persons are exempt from backup withholding, including, in
19 certain circumstances, corporations and financial institutions.

20 THE FOREGOING SUMMARY HAS BEEN PROVIDED FOR INFORMATIONAL
21 PURPOSES ONLY. ALL HOLDERS OF CLAIMS ARE URGED TO CONSULT THEIR OWN
22 TAX ADVISORS CONCERNING THE FEDERAL, STATE, LOCAL AND OTHER TAX
23 CONSEQUENCES APPLICABLE UNDER THE PLAN.

24 **IV.**

25 **CONFIRMATION REQUIREMENTS AND PROCEDURES**

26 PERSONS OR ENTITIES CONCERNED WITH CONFIRMATION OF THE PLAN
27 SHOULD CONSULT WITH THEIR OWN ATTORNEYS BECAUSE THE LAW ON
28 CONFIRMING A PLAN CAN BE VERY COMPLEX. The following discussion is intended

1 solely for the purpose of alerting readers about basic confirmation issues, which they may wish to
2 consider, as well as certain deadlines for filing claims. The Debtor CANNOT and DOES NOT
3 represent that the discussion contained below is a complete summary of the law on this topic.

4 Many requirements must be met before the Bankruptcy Court can confirm a Plan. Some of
5 the requirements include that the Plan must be proposed in good faith, acceptance of the Plan,
6 whether the Plan pays creditors at least as much as creditors would receive in a Chapter 7
7 liquidation, and whether the Plan is feasible. These requirements are not the only requirements for
8 confirmation.

9 **A. Who May Vote or Object**

10 **1. Who May Object to Confirmation of the Plan**

11 Any party in interest may object to the confirmation of the Plan, but as explained
12 below, not everyone is entitled to vote to accept or reject the Plan.

13 **2. Who May Vote to Accept/Reject the Plan**

14 A creditor or interest holder has a right to vote for or against the Plan if that
15 creditor or interest holder has a claim which is both (1) allowed or allowed for voting
16 purposes and (2) classified in an impaired class.

17 **a. What Is an Allowed Claim/Interest**

18 As noted above, a creditor or interest holder must first have an allowed
19 claim or interest to have the right to vote. Generally, any proof of claim or interest
20 will be allowed, unless a party in interest brings a motion objecting to the claim.
21 When an objection to a claim or interest is filed, the creditor or interest holder
22 holding the claim or interest cannot vote unless the Bankruptcy Court, after notice
23 and hearing, either overrules the objection or allows the claim or interest for voting
24 purposes.

25 THE BAR DATE FOR FILING A PROOF OF CLAIM in this case was
26 May 1, 2012. A creditor or interest holder may have an allowed claim or interest
27 even if a proof of claim or interest was not timely filed. A claim is deemed allowed
28 if (1) it is scheduled on the Debtor's schedules and such claim is not scheduled as

1 disputed, contingent, or unliquidated, and (2) no party in interest has objected to the
2 claim. An interest is deemed allowed if it is scheduled and no party in interest has
3 objected to the interest.

4 **b. What Is an Impaired Claim/Interest**

5 As noted above, an allowed claim or interest only has the right to vote if it is
6 in a class that is impaired under the Plan. A class is impaired if the Plan alters the
7 legal, equitable, or contractual rights of the members of that class. For example, a
8 class comprised of general unsecured claims is impaired if the Plan fails to pay the
9 members of that class 100% of what they are owed.

10 In this case, the Debtor believes that Classes 3-5 are impaired and receive
11 property under the Plan and thus holders of Claims in these classes are therefore
12 entitled to vote to accept or reject the Plan. Parties who dispute the Debtor's
13 characterization of their Claim or Interest as being impaired or unimpaired may file
14 an objection to the Plan contending that the Debtor has incorrectly characterized the
15 class.

16 **3. Who Is Not Entitled to Vote**

17 The following four types of claims are not entitled to vote: (1) Claims that have
18 been disallowed; (2) Claims in unimpaired classes; (3) Claims entitled to priority pursuant
19 to Bankruptcy Code section 507(a) claims; and (4) classes that do not receive or retain any
20 value under the Plan. Claims in unimpaired classes are not entitled to vote because such
21 classes are deemed to have accepted the Plan. Claims entitled to priority pursuant to
22 Bankruptcy Code section 507(a) are not entitled to vote because such claims are not placed
23 in classes and they are required to receive certain treatment specified by the Bankruptcy
24 Code. Claims in classes that do not receive or retain any value under the Plan do not vote
25 because such classes are deemed to have rejected the Plan. The Debtor believes that
26 holders of Allowed Class 6 and 7 are impaired but not entitled to vote because those
27 classes will not receive nor retain any value under the Plan. EVEN IF YOUR CLAIM IS
28

1 OF THE TYPE DESCRIBED ABOVE, YOU MAY STILL HAVE A RIGHT TO
2 OBJECT TO THE CONFIRMATION OF THE PLAN.

3 **4. Who Can Vote in More Than One Class**

4 A creditor whose Claim has been allowed in part as a secured Claim and in part as
5 an unsecured Claim is entitled to accept or reject the Join Plan in both capacities by casting
6 one ballot for the secured part of the Claim and another ballot for the unsecured Claim.

7 **5. Votes Necessary to Confirm the Plan**

8 If impaired classes exist, the Bankruptcy Court cannot confirm the Plan unless (1)
9 all impaired classes have voted to accept the Plan, or (2) at least one impaired class has
10 accepted the Plan without counting the votes of any insiders within that class and the Plan
11 is eligible to be confirmed by “cramdown” on non-accepting classes, as discussed
12 hereinbelow.

13 **6. Votes Necessary for a Class to Accept the Plan**

14 A class of claims is considered to have accepted the Plan when more than one-
15 half (1/2) in number and at least two-thirds (2/3) in dollar amount of the claims which
16 actually voted, voted in favor of the Plan. A Class of Interests is considered to have
17 accepted the Plan when at least two-thirds (2/3) in amount of the Interest-holders of such
18 Class which actually voted, voted to accept the Plan.

19 **7. Treatment of Nonaccepting Classes**

20 As noted above, even if all impaired Classes do not accept the proposed Plan, the
21 Bankruptcy Court may nonetheless confirm the Plan if the nonaccepting Classes are treated
22 in the manner required by the Bankruptcy Code and there is at least one impaired class that
23 accepts the Plan. The process by which non-accepting classes are forced to be bound by
24 the terms of the Plan is commonly referred to as “cramdown.” The Bankruptcy Code
25 allows the Plan to be “crammed down” on nonaccepting classes of claims or interests if it
26 meets all consensual requirements except the voting requirements of 1129(a)(8) and if the
27 Plan does not “discriminate unfairly” and is “fair and equitable” toward each impaired
28

1 class that has not voted to accept the Plan as referred to in 11 U.S.C. § 1129(b) and
2 applicable case law.

3 **B. Liquidation Analysis**

4 Another confirmation requirement is the “Best Interest Test,” which requires a liquidation
5 analysis. Under the Best Interest Test, if a claimant or interest holder is in an impaired class and
6 that claimant or interest holder does not vote to accept the Plan, then that claimant or interest
7 holder must receive or retain under the Plan property of a value not less than the amount that such
8 holder would receive or retain if the Debtor were liquidated under Chapter 7 of the Bankruptcy
9 Code.

10 In a Chapter 7 case, the Debtor’s assets are usually sold by a Chapter 7 trustee. Secured
11 creditors are paid first from the sales proceeds of assets on which the secured creditor has a lien.
12 Administrative claims are paid next. Then, unsecured creditors are paid from any remaining sales
13 proceeds according to their rights to priority. Unsecured creditors with the same priority share in
14 proportion to the amount of their allowed claim in relationship to the amount of total allowed
15 unsecured claims. Finally, interest holders receive the balance that remains, if any, after all
16 creditors are paid.

17 For the Bankruptcy Court to be able to confirm the Plan, the Bankruptcy Court must find
18 that all creditors and interest holders who do not accept the Plan will receive at least as much
19 under the Plan as such holders would receive under a Chapter 7 liquidation. The Debtor
20 maintains that this requirement is met.

21 In a Chapter 7 case, a Chapter 7 Trustee is appointed and entitled to compensation from
22 the bankruptcy estate in an amount not to exceed 25% of the first \$5,000 of all moneys disbursed,
23 10% of any amount over \$5,000 but less than \$50,000, 5% of any amount over \$50,000 but less
24 than \$1 million, and 3% of all amounts over \$1 million. In this case, a Chapter 7 Trustee’s
25 compensation is estimated to be approximately \$16,000. In addition, because the Chapter 7
26 Trustee would likely replace the professionals currently employed by the estate, the Chapter 7
27 Trustee’s new professionals will burden the estate with additional fees to become familiar with
28 the issues in this case. Furthermore, the Debtor believes that in a Chapter 7 liquidation,

1 distributions to creditors would be delayed due to, among other things: (a) the setting of a new
2 bar date for the filing of proofs of claim, which could also result in the filing of additional claims
3 and thus reduce the pro rata distribution to each of the Debtor's creditors; (b) the preparation of
4 the Debtor's final report to the U.S. Trustee; and (c) the administrative activities of the U.S.
5 Trustee and the Bankruptcy Court's clerk's office in connection with, among other activities,
6 converting and closing the case. Thus, the Debtor concludes that the Plan provides fair and
7 equitable treatment of all classes of creditors and the greatest feasible recovery to all creditors.

8 Exhibit "3" demonstrates, in balance sheet format, that all Creditors and Interest holders
9 will receive at least as much under the Plan as such Creditor or Interest holder would receive
10 under a Chapter 7 liquidation. This information is provided by the Debtor.

11 In a Chapter 7, unsecured creditors will recover less than they would in the Chapter 11
12 because a Chapter 7 would accrue additional costs that would not be incurred by the Chapter 11.
13 In particular, in a Chapter 7, general unsecured creditors would receive approximately 0%,
14 compared with an amount greater than zero for the reasons described above, in this Chapter 11.
15 Since substantially all assets have been liquidated and litigation/receivable actions are already
16 being prosecuted on a contingency basis, all creditors and interest holders will receive at least as
17 much under the Plan as such creditor or holder would receive under a Chapter 7 liquidation.

18 **C. Feasibility**

19 Another requirement for confirmation involves the feasibility of the Plan, which means
20 that confirmation of the Plan is not likely to be followed by the liquidation, or the need for further
21 financial reorganization, of the Debtor or any successor to the Debtor under the Plan, unless such
22 liquidation or reorganization is proposed in the Plan. This plan will not be followed by a
23 liquidation and there will be no need for a financial reorganization because this is a plan of
24 liquidation (i.e., all assets have been liquidated and remaining claims are being litigated).

25 **V.**

26 **EFFECT OF CONFIRMATION OF PLAN**

27 **A. Discharge.**

28 Confirmation of the Plan will not discharge Creditors' Claims. *See* 11 U.S.C. § 1141(d)(3).

1 **B. Injunction.**

2 Except as provided expressly to the contrary in the Plan or in the Confirmation Order, on
3 and after the Effective Date, all Creditors (including, but not limited to, states and other
4 governmental units, and any state official, employee, or other entity acting in an individual or
5 official capacity on behalf of any state or other governmental unit), and Interest Holders shall be
6 permanently enjoined from the following: (a) taking any of the following actions on account of
7 any such Claim: (i) commencing or continuing in any manner any action or other proceeding
8 against the Liquidation Trustee, its Representatives, the Liquidation Trust or the Liquidation Trust
9 Assets; (ii) enforcing, attaching, executing, collecting, or recovering in any manner any judgment,
10 award, decree, or order against the Liquidation Trustee, its Representatives, the Liquidation Trust
11 or the Liquidation Trust Assets; (iii) creating, perfecting, or enforcing any Lien against the
12 Liquidation Trustee, its Representatives, the Liquidation Trust or the Liquidation Trust Assets;
13 (iv) asserting any set off, right of subrogation, or recoupment of any kind against any obligation
14 due to the Debtor, the Estate or the Liquidation Trustee; and (v) commencing or continuing any
15 action, in any manner, in any place that does not comply with or is inconsistent with the provisions
16 of the Plan; and (b) taking any acts on account of the Insider Causes of Action and all other Causes
17 of Action that are vested in, or transferred to, the LT Advisory Board or the Liquidation Trustee,
18 respectively, as of the Effective Date, including, without limitation, commencing or continuing in
19 any manner any Avoidance Action (i.e., no party may pursue any Causes of Action except as
20 provided by the Plan). Any person or entity injured by any willful violation of such injunction
21 shall recover its actual damages, including costs and attorneys' fees, and, in appropriate
22 circumstances, may recover punitive damages from the willful violator of such injunction.

23 **C. Release.**

24 Except as otherwise provided in the Plan or in the Confirmation Order, all Creditors shall
25 be precluded from asserting any Claims against the Liquidation Trustee, the Committee, the LT
26 Advisory Board, each of their respective Representatives, the Liquidation Trust, and the
27 Liquidation Trust Assets. Notwithstanding anything herein to the contrary, no Causes of Action
28 that is the property of the Debtor and/or the Estate shall in any way be released, modified, altered

1 or compromised by virtue of the confirmation of the Plan and the Insider Causes of Action and all
2 other Causes of Action shall automatically be transferred, as of the Effective Date, to the LT
3 Advisory Board and the Liquidation Trustee, respectively, in accordance with the provisions of
4 Section 6 of the Plan.

5 **D. Distribution of Property Free and Clear of Liens, Claims, and Interests.**

6 Except as otherwise provided in the Plan or in the Confirmation Order, all property
7 distributed under the Plan shall be distributed free and clear of all Liens and other Claims of
8 Creditors and the Interest of the Debtor.

9 **E. Binding Effect of Plan.**

10 Upon the Effective Date, the provisions of the Plan shall be binding upon the Debtor, the
11 Liquidation Trustee, and each Creditor.

12 **F. Transfer of Assets.**

13 Except only for the Abandoned Assets, which shall be vested in the Debtor, on the
14 Effective Date, all assets, properties and interests of the Estate shall vest in, and shall be property
15 of, the Liquidation Trustee, to be held in trust by the Liquidation Trustee for the benefit of holders
16 of Allowed Claims in accordance with the provisions of the Plan.

17 **G. Reservation of Rights.**

18 Nothing contained herein shall impair or affect in any manner any, claims, actions or
19 proceedings which have been or which may be asserted or filed to bar the dischargeability of the
20 Debtor's debt to a Creditor pursuant to section 523 of the Bankruptcy Code or to deny the Debtor a
21 discharge pursuant to section 727 of the Bankruptcy Code.

22 **VI.**

23 **MISCELLANEOUS' PROVISIONS**

24 **A. Post-Confirmation Conversion/Dismissal.**

25 A creditor or party in interest may bring a motion to convert or dismiss the case under
26 § 1112(b), after the Plan is confirmed, if there is a default in performing the Plan. If the
27 Bankruptcy Court orders the case converted to Chapter 7 after the Plan is confirmed, then all
28 property that had been property of the Chapter 11 estate, and that has not been disbursed pursuant

1 to the Plan, will revert in the Chapter 7 estate. The automatic stay will be reimposed upon the
2 revested property, but only to the extent that relief from stay was not previously authorized by the
3 Bankruptcy Court during this case.


4 The order confirming the Plan may also be revoked under very limited circumstances. The
5 Court may revoke the order if the order of confirmation was procured by fraud and if the party in
6 interest brings an adversary proceeding to revoke confirmation within 180 days after the entry of
7 the order of confirmation.

8 **B. Final Decree.**

9 Once the estate has been fully administered as referred to in Bankruptcy Rule 3022, the
10 Plan Debtor, or other party as the Bankruptcy Court shall designate in the Plan confirmation
11 order, shall file a motion with the Bankruptcy Court to obtain a final decree to close the case.

12 DATED: September 30, 2013

WALLDESIGN, INC.

13
14 By: 
Brian Weiss

15 DATED: September 30, 2013

**WINTHROP COUCHOT
PROFESSIONAL CORPORATION**

16
17
18 By: /s/ Garrick A. Hollander
19 Marc J. Winthrop
20 Garrick A. Hollander
21 General Insolvency Counsel for Debtor and
22 Debtor in Possession
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

DECLARATION OF BRIAN WEISS

I, Brian Weiss, declare:

1. I am the Chief Restructuring Officer of Walldesign, Inc., the debtor and debtor-in-possession herein (the “Debtor”). All of the matters to which I will testify in this declaration are based upon my own personal knowledge, are true and correct and, if called upon to testify, I could and would competently testify to the facts set forth herein.

2. As the Debtor’s Chief Restructuring Officer, I have personal knowledge of the Debtor’s operations and the Debtor’s current financial condition. Further, I have a basic understanding of the Debtor’s historical condition based on my review of the Debtor’s books and records.

3. I have assisted the Debtor’s counsel in the preparation of the Disclosure Statement and Plan filed herewith. To the best of my knowledge, the information contained in the Disclosure Statement and the Plan is truthful and accurate.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: September 30, 2013



Brian Weiss

EXHIBIT “1”

WallDesign, Inc.
Potential Defendants in Potential Avoidance Actions

68 Canyon Staging Contractor	Henry-West Designs
Aaron Patt	Josephine Bello
Acoustical Material Service	Kelly-Moore Paint Company
AIG	Kiki-B Trucking
Allegiance Premium	Knupp Brothers
Alvarez	MB Landscapes, Inc.
American Express	MGM Grand
Ames Tape System	Michael Bello
BAC Home Loans	Michael Bello LLC
Bella Casa	Napascapes
Bello Family Trust	Nextel Communications
Bello Family Vineyard	Oceanfront HOA
Ben Franklin Press	Preferred Bank
Bighorn Golf/HOA	Renix Corporation
BMW Financial	Rew L.V. Rew Materials
Churchill Downs	Rise Above Trucking, Inc.
CJ Constuction	Ru Investments
Comerica Bank	Scully Vineyards
Dan Buresh & Sharon Phillips	Seabright Ins. Co
David Abreu Vineard	Shady Canyon GC
De Latorre Construction Inc	Sherwin Williams
Del Mar Thoroughbred Club	Southwest Gas
Downs Commercial Fueling	Southwest Materials
Ehren Jordan	Star Vineyards
Failla Vineyards	State Farm Insurance
Ferrari Financial	Stephen Bello
Fidelity National Title	Taransaud North America
Foam Concepts	The Montgomery Group
Frazee Paint	The Ranch Winery
Geronimo	Wells Fargo
Great	Wynn
Hago LLC	XIV Karats, Ltd.
Healthnet	Young Ideas

EXHIBIT “2”

Walldesign, Inc.

Anticipated Claim Objections

Claim

no.	Claimant
71	CALIFORNIA SELF-INSURERS' SECURITY FUND
68	COMERICA BANK
65	LIBERTY MUTUAL INSURANCE COMPANY
72	VFS FINANCING, INC. (GE Capital)
73	CHARTIS INC.
72	VFS FINANCING, INC. (GE Capital)
100	WELLS FARGO BANK, NATIONAL ASSOCIATION
6	AMERICAN HOME ASSURANCE CO
1	PAINTERS & ALLIED TRADES
2	PAINTERS & ALLIED TRADES
	ACOUSTICAL MATL SRVC
77	STATE COMP INS FUND
9	INTERNAL REVENUE SERVICE
79	KCG, INC.
55	ACOUSTICAL MATERIAL SERVICES
76	CONTRACTORS ACCESSS PROGRAM OF CALIFORNIA BY BICKMORE
59	FOAM CONCEPTS INC
24	ORANGE COUNTY TREASURER
86	BELLO CONSTRUCTION COMPANY
44	CERTAINTED CORP, INSULATION
109	PAINTERS JOIN TRUSTS C/O DARYL MARTIN
27	PULTE HOME CORPORATION
91	RONALD PINEDA
87	RU INVESTMENTS LLC
	WAGES, SALARIES, AND COMMISSIONS
90	RONAEL GARCIA
9	INTERNAL REVENUE SERVICE
74	RISE ABOVE TRUCKING, INC.
94	A-Z CELLULARWORLD, INC.
109	PAINTERS JOIN TRUSTS C/O DARYL MARTIN
75	SOUTH COAST FOAM SHAPES
80	D.R. HORTON, INC.
78	RYLAND HOMES NEVADA, LLC, THE RYLAND GROUP, INC.
47	AMES TAPING TOOL
	COMERICA BANK
28	DOWNS ENERGY
58	KIKI-B TRUCKING
59	FOAM CONCEPTS INC
34	FLATIRON CAPITAL/WELLS FARGO BANK
	HEALTH NET
81	WESTERN EQMT MANUFACTURING
99	PLACER COUNTY TAX COLLECTOR
37	DE LATORRE CONSTRUCTION INC.
39	NEVADA DEPARTMENT OF TAXATION
25	ATIS GROUP, LLC
3	COURIER PRINTING INC
107	CIT FINANCING SERVICES

Walldesign, Inc.

Anticipated Claim Objections

Claim

no. Claimant

- 110 SAN DIEGO COUNTY TREASURER
J BELLO
- 53 ST OF NV DEPT MOTOR VEHICLE
- 104 CIT FINANCING SERVICES
- 40 FRANCHISE TAX BOARD
- 102 CIT FINANCING SERVICES
- 101 CIT FINANCING SERVICES
- 108 CIT FINANCING SERVICES
- 106 CIT FINANCING SERVICES
- 105 CIT FINANCING SERVICES
- 103 CIT FINANCING SERVICES

EXHIBIT “3”

Walldesign Incorporated
Chapter 7 Liquidation Analysis

General Assumptions

In chapter 7 bankruptcy, a trustee (the “Chapter 7 Trustee”) is appointed to manage a debtor’s affairs and conduct a liquidation. Accordingly, the Liquidation Analysis assumes Chapter 7 Trustee would be required to liquidate and would do so on an expedited, but orderly basis. The Debtor would be forced to cease substantially all operations immediately and the Chapter 7 Trustee would use the Debtor's cash position to liquidate all assets and pay priority claims. In Walldesign's case, the operations have already ceased and all projects have been completed.

The following table summarizes the estimated proceeds that would be available for distribution to the Debtor’s creditors in a hypothetical liquidation of the Debtor’s estate under chapter 7 of the Bankruptcy Code.

	Notes	Book Value as of 8/31/13	Estimated Recovery %	Estimated Liquidation Value
Cash - Encumbered	[1]	120,298	100%	120,298
Cash - Unencumbered		67,375	100%	67,375
Accounts Receivable, net	[2]	30,000	65%	19,500
Recoveries Under Avoidance Actions	[3]	-	0%	-
Gross Proceeds Available for Distribution		<u>217,673</u>	95%	<u>207,173</u>
Less:				
Trustee Fees				(13,609)
Professional Fees				<u>(75,000)</u>
Total Chapter 7 Administrative Costs				<u>(88,609)</u>
Net Proceeds Available for Distribution to Creditors				118,564
Secured Claims:				
Comerica Bank	[4]	936,281	20%	(185,940)
Michael R. Bello	[5]	<u>272,000</u>	0%	<u>-</u>
		1,208,281		(67,375)
Administrative Claims	[11]	450,288	15%	<u>(67,375)</u>
Proceeds Available for Unsecured Claims				-

Notes & Significant Assumption to Liquidation Analysis

[1] Subject to security interest held by Comerica Bank.

[2] Amounts are stated at the estimated recovery amount less a 35% contingency based collection fee.

[3] Amounts are not known at this time. Represents the pursuit of avoidance actions against Michael Bello for prepetition transfers. The Debtor has granted the Committee standing to pursue these actions. The estimated recovery is unknown at this time.

[4] Includes paydown of \$3,007,840 resulting from a restricted cash account of the guarantor, Michael Bello. Includes approximately \$145k in outstanding credit card balances Comerica purports is secured.

[5] Represents scheduled claim amount pursuant to a filed UCC statement. The claims of Mr. Bello are to be adjudicated. For purposes of this analysis, it is assumed the claim will not be subordinated for purposes of classification of the claim in this analysis.

EXHIBIT “4”

1 MARC J. WINTHROP – State Bar No. 63218
mwinthrop@winthropcouchot.com
2 GARRICK A. HOLLANDER – State Bar No. 166316
ghollander@winthropcouchot.com
3 **WINTHROP COUCHOT**
4 **PROFESSIONAL CORPORATION**
660 Newport Center Drive, Suite 400
5 Newport Beach, CA 92660
Telephone: (949) 720-4100
6 Facsimile: (949) 720-4111

7 General Insolvency Counsel for Walldesign, Inc.
8 Debtor and Debtor in Possession

9
10 **UNITED STATES BANKRUPTCY COURT**
11 **CENTRAL DISTRICT OF CALIFORNIA**
12 **SANTA ANA DIVISION**
13

14 In re:

15 WALLDESIGN, INC., a California
16 corporation,

17 Debtor and
18 Debtor-in-Possession.

Case No. 8:12-bk-10105-CB

Chapter 11 Proceeding

**DEBTOR'S CHAPTER 11 PLAN OF
LIQUIDATION**

Disclosure Statement Approval Hearing:

Date: November 20, 2013

Time: 10:00 a.m.

Place: Courtroom 5D
411 W. Fourth Street
Santa Ana, CA 92701

Plan Confirmation Hearing:

Date: [To Be Set]

Time: _____

Place: Courtroom 5D
411 W. Fourth Street
Santa Ana, CA 92701

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

		<u>PAGE</u>
	I. INTRODUCTION	2
	II. DEFINITIONS AND RULES OF CONSTRUCTION	3
	2.1 Defined Terms	3
	2.2 Rules of Interpretation	20
	2.3 Exhibits	20
	III. UNCLASSIFIED CLAIMS	21
	3.1 Allowed Administrative Claims	21
	3.1.1 Payment.....	21
	3.1.2 Supplemental Administrative Claims Bar Date.....	22
	3.1.3 Deadline for Objections	22
	3.1.4 United States Trustee Fees.....	22
	3.1.5 Pre-Effective Date Professional Fee Claims.....	22
	3.2 Allowed Priority Tax Claims	23
	IV. CLASSIFICATION OF CLAIMS AND INTEREST	23
	4.1 Overview.....	23
	4.2 Designation of Classes	24
	4.2.1 Allowed Claims	24
	4.2.2 Interest.....	24
	4.3 Summary of Classification.....	24
	V. TREATMENT OF CLASSES UNDER THIS PLAN	25
	5.1 Class 1 -- Allowed Secured Claim of Comerica.....	25
	5.1.1 Classification.....	25
	5.1.2 Treatment	26
	5.1.3 Voting	26
	5.2 Class 2 -- The Secured Claim of VFS.....	26
	5.2.1 Classification.....	26
	5.2.2 Treatment	26
	5.2.3 Voting	26
	5.3 Class 3 -- Any Allowed Secured Claim of Bello Construction	26
	5.3.1 Classification.....	26
	5.3.2 Treatment	26
	5.3.3 Voting	27
	5.4 Class 4 -- Any Allowed Priority Non-Tax Claims.....	27
	5.4.1 Classification.....	27
	5.4.2 Treatment	27
	5.4.3 Voting	27
	5.5 Class 5 -- Allowed General Unsecured Claims	27
	5.5.1 Classification.....	27
	5.5.2 Treatment	27
	5.5.3 Voting	28

TABLE OF CONTENTS

(Continued)

	<u>PAGE</u>
5.6 Class 6 -- Subordinated Claims.....	28
5.6.1 Classification.....	28
5.6.2 Treatment	28
5.6.3 Voting	28
5.7 Class 7 -- Interests in the Debtor.....	28
5.7.1 Classification.....	28
5.7.2 Treatment	28
5.7.3 Voting	28
 VI. PLAN IMPLEMENTATION	 28
6.1 Overview.....	28
6.2 Conditions Precedent to Plan Confirmation	29
6.3 Conditions Precedent to the Effectiveness of the Plan	29
6.4 Implementation of Plan.....	30
6.5 Authorization for Transactions	30
6.6 Provisions Relating to Federal Income Tax Compliance	30
6.7 Liquidation Trustee.....	30
6.7.1 Establishment and Administration of Liquidation Trust Fund.....	31
6.7.2 Distributions on Account of Allowed Claims.....	31
6.7.3 Objections to Disputed Claims	31
6.7.4 Prosecution of Causes of Action.....	31
6.7.5 Enforcement of Rights, Claims and Remedies of the Debtor and the Estate	32
6.7.6 Disposition of Liquidation Trust Assets	32
6.7.7 Management of Liquidation Trust Assets.....	32
6.7.8 Investigation of Debtor’s Assets and Properties/ Prosecution of Causes of Action Against the Debtor and/or Insiders and Affiliates of the Debtor	32
6.7.9 Other Rights, Powers and Duties.....	33
6.8 Liquidation Trustee Assets	33
6.9 Distributions from Liquidation Trust Fund.....	33
6.10 Representative of the Estate.....	33
6.11 No Liability of the LT Advisory Board or the Liquidation Trustee	34
6.12 Funding of Post-Effective Date Plan Expenses	34
6.13 Termination of the Committee and Appointment of the LT Advisory Board.....	35
6.13.1 Replacement of the Committee.....	35
6.13.2 Members of Any LT Advisory Board.....	35
6.13.3 Duties of Members of Any LT Advisory Board.....	35

TABLE OF CONTENTS

(Continued)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PAGE

6.14	Causes of Action	36
6.14.1	Liquidation Trustee’s Right to Prosecute Causes of Action	36
6.14.2	LT Advisory Board’s Right to Prosecute Insider Causes of Action	36
6.14.3	LT Advisory Board’s Right to Make Demand for Prosecution of Causes of Action.....	36
6.15	Post-Effective Date Professional Fees	37
6.15.1	Liquidation Trustee’s Employment of Professionals.....	37
6.15.2	Ordinary Course Payments to Professionals.....	38
6.16	Approval for Disposition of Assets.....	38
6.17	Compromise of Claims Objections and Causes of Action.....	38
6.18	Bankruptcy Court Approval Relative to Post-Confirmation Matters	38
6.19	Plan Completion Certification	39
6.20	Final Decree	39
6.21	Books and Records	39
6.22	Obligation to Cooperate with Liquidation Trustee	39
6.22.1	Transfer of Liquidation Trust Assets	40
6.22.2	Cooperation Regarding Management of Liquidation Trust Assets.....	40
6.22.3	Cooperation Regarding Disposition of Liquidation Trust Assets.....	40
6.22.4	Payment of Affiliate Distributions.....	40
6.22.5	Cooperation Regarding Assertion of Causes of Action.....	40
6.22.6	No Inconsistent Acts	40
6.23	Resolution of Disputes.....	41
6.24	Disposition of Guarantees.....	41
6.25	No Waiver of Reimbursement or Contribution Claims	41
VII.	DISTRIBUTIONS	42
7.1	Distributions Generally.....	42
7.1.1	Distributions.....	42
7.1.2	Liquidation Trustee’s Employment of Agents.....	42
7.2	Distribution of Property Under this Plan	42
7.2.1	Cash Distributions.....	42
7.2.2	Setoffs and Recoupment	42
7.2.3	No De Minimis Distributions.....	42
7.2.4	Timeliness of Distributions.....	43
7.2.5	Limitation on Liability.....	43

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

(Continued)

	<u>PAGE</u>
7.2.6 Delivery of Distributions	43
7.2.6.1 Distributions Only to Holders of an Allowed Claim	43
7.2.6.2 Addresses to Which Distributions Will Be Sent	43
7.2.7 Undeliverable Distributions	44
7.2.8 Disposition of Unclaimed Property	44
7.2.9 Compliance with Tax Requirements.....	45
7.2.10 Further Assurances Regarding Distributions	45
7.2.11 Creditor’s Payment of Obligations or Turn Over of Property to the Liquidation Trustee	45
VIII. OBJECTIONS TO DISPUTED CLAIMS.....	45
8.1 Objections to Claims.....	45
8.1.1 Liquidation Trustee’s Right to Object to Disputed Claims	45
8.1.2 LT Advisory Board’s Right to Make Demand for Filing Objection to Disputed Claims	46
8.2 Claims Objection Deadline	47
8.3 Treatment of Disputed Claims	47
8.3.1 No Distribution Pending Allowance	47
8.3.2 Distributions After Allowance	47
8.3.3 Reserve for Disputed Claims	47
8.3.4 No Distribution Until Allowance of Disputed Claim	48
8.4 Bar Date for Filing Avoidance Action Payment Claims	48
IX. LITIGATION.....	49
9.1 Authorization to Assert Causes of Action	49
9.2 Evaluation of Causes of Action	49
9.3 Retention of Professionals	49
9.4 Preservation of Causes of Action.....	50
9.5 Subordination of Claims	50
X. EXECUTORY CONTRACTS AND UNEXPIRED LEASES	50
10.1 Executory Contracts and Unexpired Leases Being Rejected.....	50
10.2 Retention of Property Rights	51
10.3 Bar Date for Rejection Claims.....	51
10.4 Cure Claims Schedule.....	51
XI. EFFECT OF CONFIRMATION OF THIS PLAN.....	52
11.1 Discharge	52
11.2 Injunction	52

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TABLE OF CONTENTS

(Continued)

	<u>PAGE</u>
11.3 Release	52
11.4 Distribution of Property Free and Clear of Liens, Claims, and Interests	53
11.5 Binding Effect of Plan	53
11.6 Transfer of Assets	53
11.7 Reservation of Rights.....	53
XII. LIMITATION OF LIABILITY	53
12.1 No Liability for Solicitation or Participation	53
12.2 Good Faith	54
12.3 Limitation of Liability Regarding Plan.....	54
XIII. OTHER PLAN PROVISIONS	54
13.1 Exemption from Stamp, Transfer and Other Taxes	54
13.2 Post-Effective Date Quarterly Fees	54
13.3 Post-Effective Date Status Reports	54
13.4 Effectiveness of Court Orders.....	55
13.5 No Admissions.....	55
13.6 Withdrawal of the Plan	55
13.7 Severability of Plan Provisions.....	55
13.8 Governing Law	56
13.9 Retention of Jurisdiction.....	56
13.10 Successors and Assigns.....	58
13.11 Business Day.....	58
13.12 No Waiver.....	58
13.13 Post-Effective Date Notice	59
13.14 Modification of this Plan	59
13.15 Nonconsensual Confirmation.....	59
13.16 Other Documents and Actions	60
13.17 Notices	60
13.18 Inconsistencies	60
13.19 Changes in Rates Subject to Regulatory Commission Approval.....	60
13.20 Modification/Superseding of Loan and Security Agreements.....	60
13.21 Implementation of Section 1142 of the Bankruptcy Code.....	61
13.22 Implementation of Section 1145 of the Bankruptcy Code.....	61
XIV. RECOMMENDATION AND CONCLUSION.....	61

1 The Debtor hereby proposes this Plan and requests confirmation hereof pursuant to
2 section 1129 of the Bankruptcy Code.¹

3 **I.**

4 **INTRODUCTION**

5 This Plan is proposed by the Debtor. Sent to you in the same envelope as this Plan is the
6 Debtor's Disclosure Statement accompanying this Plan. The Disclosure Statement has been
7 approved by the Bankruptcy Court as containing "adequate information" under section 1125 of the
8 Bankruptcy Code, and is being provided along with this Plan in order to help you to understand
9 this Plan and to evaluate the merits of this Plan. The Disclosure Statement addresses, among other
10 things, the Debtor's business, the Debtor's assets and liabilities and the material terms of this Plan.
11 Creditors are encouraged to read the Disclosure Statement before voting on this Plan.

12 The objective of this Plan is for the Debtor to liquidate on an orderly basis the assets of the
13 Debtor and to distribute the proceeds therefrom on an expeditious basis to Creditors, in accordance
14 with the terms and conditions of this Plan. Pursuant to this Plan, a Liquidation Trustee will be
15 appointed to take control of and to administer the Debtor's assets, to liquidate the Debtor's assets,
16 to prosecute certain Causes of Action and to make Distributions to Creditors, in accordance with
17 the terms and conditions of this Plan. Pursuant to this Plan, a Liquidation Trust will be
18 established, into which proceeds from the disposition of the Debtor's assets and Net Recoveries
19 will be deposited and from which Distributions to Creditors will be made.

20 This Plan divides Creditors and equity in the Debtor into Classes based upon their
21 respective legal rights and interests, and provides for the satisfaction of Allowed Claims, in
22 accordance with the terms and conditions of this Plan.

23 **THE FINANCIAL INFORMATION CONTAINED OR REFERRED TO IN THIS**
24 **PLAN HAS NOT BEEN SUBJECT TO CERTIFIED AUDIT. ALTHOUGH THE DEBTOR**
25 **BELIEVES THAT EVERY REASONABLE EFFORT HAS BEEN MADE TO PRESENT**
26 **HEREIN ACCURATE FINANCIAL INFORMATION, SINCE THE FINANCIAL**
27 **INFORMATION CONTAINED HEREIN DERIVES PRIMARILY FROM THE**

28 _____
¹ The definitions of the capitalized terms contained herein are set forth in Article II of this Plan.

1 **DEBTOR’S UNAUDITED FINANCIAL REPORTING, THE DEBTOR CANNOT**
2 **WARRANT THAT THE FINANCIAL INFORMATION IS FREE OF INACCURACY.**
3 **NEITHER THE DEBTOR NOR ANY OF THE PROFESSIONALS EMPLOYED BY THE**
4 **DEBTOR’S ESTATE HAS INDEPENDENTLY VERIFIED THE INFORMATION**
5 **CONTAINED HEREIN, AND NONE OF THEM MAKES ANY REPRESENTATION OR**
6 **WARRANTY WITH RESPECT TO THE ACCURACY OF SUCH INFORMATION.**

7 **ANY CREDITOR ENTITLED TO VOTE ON THIS PLAN IS URGED TO REVIEW**
8 **CAREFULLY THIS PLAN PRIOR TO VOTING ON THIS PLAN, AND MAY DESIRE TO**
9 **CONSULT WITH ITS OWN LEGAL COUNSEL PRIOR TO VOTING ON THIS PLAN IN**
10 **ORDER TO ENSURE A COMPLETE UNDERSTANDING OF THE TERMS OF THIS**
11 **PLAN.**

12 **II.**

13 **DEFINITIONS AND RULES OF CONSTRUCTION**

14 **2.1 Defined Terms.** The following terms (which appear in this Plan as capitalized
15 terms), when used in this Plan, have the meanings set forth below.

16 **2.1.1 “Administrative Claim”** means a Claim for costs or expenses that are
17 allowable under sections 503(b) or 507(b) of the Bankruptcy Code or 28 U.S.C. § 1930.
18 These costs or expenses may include: (a) actual, necessary costs and expenses of
19 preserving the Estate after the Petition Date; (b) Ordinary Course Administrative Claims;
20 (c) Pre-Effective Date Professional Fee Claims; (d) Administrative Tax Claims;
21 (e) Supplemental Administrative Claims; and (f) United States Trustee Fees.

22 **2.1.2 “Administrative Claims Bar Date”** is, pursuant to court order,
23 [January __, 2013].

24 **2.1.3 “Administrative Claims Objection Deadline”** has the meaning set forth
25 in Section 3.1.3 of this Plan.

26 **2.1.4 “Administrative Tax Claim”** means a Tax Claim, other than a Secured
27 Claim, that a governmental unit asserts against the Debtor for any tax period that, in whole
28

1 or in part, falls within the period commencing on the Petition Date and ending on the
2 Effective Date.

3 **2.1.5** **“Affiliate”** shall have the meaning set forth in section 101(2) of the
4 Bankruptcy Code, and for purposes of the Plan, shall include, without limitation, RU
5 Investments, Bello Family Vineyard and Bello Family Trust, Bello Construction, and
6 Michael Bello, LLC.

7 **2.1.6** **“Affiliate Creditor”** means any claimant asserting against an Affiliate a
8 claim, right, demand, cause of action, interest, charge or Lien, of any kind or nature,
9 whether in law or in equity, disputed or undisputed, contingent or non-contingent,
10 liquidated or unliquidated.

11 **2.1.7** **“Affiliate Distribution”** means any and all distributions or other
12 payments of any nature which the Liquidation Trustee may be entitled to receive after the
13 Effective Date from an Affiliate on account of any claim against the Affiliate or otherwise.

14 **2.1.8** **“Allowed Administrative Claim”** means an Administrative Claim that
15 is allowed as set forth in Section 3.1 hereof or otherwise by a Final Order.

16 **2.1.9** **“Allowed Avoidance Action Payment Claim”** means an Allowed Claim
17 based upon or arising from an entity’s payment to the Debtor or to the Liquidation Trust of
18 a claim asserted against such entity pursuant to an Avoidance Action. Any Allowed
19 Avoidance Action Payment Claim shall be treated hereunder as an Allowed Class 5 Claim.

20 **2.1.10** **“Allowed Claim”** means a Claim (a) that is listed in the Bankruptcy
21 Schedules and not listed as disputed, contingent, unliquidated or unknown as to amount and
22 as to which no timely objection has been filed; (b) with respect to which a Proof of Claim
23 has been filed by the Bar Date, and as to which no objection is filed within the time period
24 fixed by the Bankruptcy Code, the Bankruptcy Rules, this Plan or by order of the
25 Bankruptcy Court, or as to which any such objection has been determined in whole or in
26 part in favor of the holder of the Claim by a Final Order; or (c) that has been resolved
27 pursuant to a settlement agreement approved by Final Order of the Bankruptcy Court or
28 otherwise authorized pursuant to this Plan. The amount of an Allowed Claim shall be as

1 follows: (i) if the Creditor did not file a Proof of Claim with the Bankruptcy Court on or
2 before the Bar Date, the amount of the Creditor's Claim as listed in the Bankruptcy
3 Schedules as neither disputed, contingent, unliquidated or unknown; or (ii) if the Creditor
4 filed a Proof of Claim with the Bankruptcy Court on or before the Bar Date, (A) the
5 amount stated in such Proof of Claim if no objection to such Proof of Claim is filed within
6 the time period fixed by the Bankruptcy Code, the Bankruptcy Rules, this Plan or by order
7 of the Bankruptcy Court, (B) the amount thereof fixed by a Final Order of the Bankruptcy
8 Court if an objection to such Proof of Claim is filed within the time period fixed by the
9 Bankruptcy Code, the Bankruptcy Rules, this Plan or by order of the Bankruptcy Court; or
10 (C) the amount fixed pursuant to a settlement agreement approved by Final Order of the
11 Bankruptcy Court or otherwise authorized pursuant to this Plan. Any Claim that is not
12 filed by the Bar Date and that is listed in the Bankruptcy Schedules as wholly disputed,
13 unliquidated, contingent or unknown, or that is not allowed under the terms of this Plan,
14 shall be disallowed in full, and no Distribution shall be made on account of such Claim.
15 Notwithstanding anything to the contrary contained in this Section 2.1.10 or in
16 Sections 8.3.3 or 8.3.4 of this Plan, a Claim which is disputed only in part shall be deemed
17 to be a Disputed Claim only as to the amount of the Claim which is disputed and shall be
18 deemed to be an Allowed Claim as to the amount of the Claim which is not disputed.

19 **2.1.11** "Allowed Class '***' Claim" means an Allowed Claim classified in the
20 specified Class.

21 **2.1.12** "Allowed Deficiency Claim" means that portion of an Allowed Claim
22 that is in excess of the value of any Debtor Collateral which is security for the repayment of
23 such Claim, calculated in accordance with the provisions of section 506 of the Bankruptcy
24 Code.

25 **2.1.13** "Allowed General Unsecured Claim" means a General Unsecured
26 Claim that is an Allowed Claim.

27 **2.1.14** "Allowed Priority Non-Tax Claim" means an unsecured Allowed
28 Claim entitled to priority pursuant to sections 507(a)(4), 507(a)(5), or 507(a)(7) of the

1 Bankruptcy Code. “Allowed Priority Non-Tax Claim” shall not include any Priority Tax
2 Claim.

3 **2.1.15** **“Allowed Priority Tax Claim”** means an Allowed Claim entitled to
4 priority under section 507(a)(8) of the Bankruptcy Code.

5 **2.1.16** **“Allowed Priority Wage Claim”** means an unsecured Allowed Claim
6 entitled to priority under Sections 507(a)(3) or (4) of the Bankruptcy Code.

7 **2.1.17** **“Allowed Rejection Claim”** means an Allowed General Unsecured
8 Claim based upon or arising from the rejection of an executory contract or unexpired lease
9 pursuant to a Final Order of the Bankruptcy Court or pursuant to this Plan. Any Allowed
10 Rejection Claim shall be treated hereunder as an Allowed Class 5 Claim.

11 **2.1.18** **“Allowed Secured Claim”** means an Allowed Claim secured by a valid
12 and unavoidable Lien against property in which the Estate has an interest, or that is subject
13 to setoff under section 553 of the Bankruptcy Code, to the extent of the value, determined
14 in accordance with section 506(a) of the Bankruptcy Code, of the Secured Creditor’s
15 interest in the Estate’s interest in the Debtor Collateral securing the Claim, or to the extent
16 of the amount subject to setoff, whichever is applicable. Unpaid principal and any accrued
17 interest allowable under section 506 of the Bankruptcy Code with respect to an Allowed
18 Secured Claim shall be computed as of the Effective Date, and the Allowed Secured Claim
19 shall thereafter bear interest as provided in this Plan.

20 **2.1.19** **“Avoidance Action”** means an adversary proceeding, lawsuit or other
21 action or proceeding filed pursuant to sections 502(d), 506, 510, 542, 543, 544, 545, 547,
22 548, 549, 550, 551, 552 or 553 or other sections of the Bankruptcy Code, an adversary
23 proceeding, lawsuit or other action or proceeding based on applicable non-bankruptcy law
24 that may be incorporated or brought under the foregoing sections of the Bankruptcy Code,
25 an adversary proceeding, lawsuit or other action or proceeding arising under, or relating to,
26 any similar state law or federal law, and any other similar action or proceeding filed to
27 recover property for or on behalf of the Estate or the Liquidation Trust, to avoid a Lien or
28

1 transfer, or to subordinate a Claim, whether or not such adversary proceeding, lawsuit,
2 action or proceeding is initiated on or before the Effective Date.

3 **2.1.20** **“Avoidance Action Payment Claim”** means a Claim based upon or
4 arising from an entity’s payment to the Debtor or to the Liquidation Trust of a claim
5 asserted against such entity pursuant to an Avoidance Action.

6 **2.1.21** **“Bankruptcy Code”** means title 11 of the United States Code [11 U.S.C.
7 §§ 101-1532], as now in effect and as may be hereafter amended.

8 **2.1.22** **“Bankruptcy Court”** means the United States Bankruptcy Court for the
9 Central District of California, Santa Ana Division.

10 **2.1.23** **“Bankruptcy Rules”** means, collectively, the Federal Bankruptcy Rules
11 and the Local Bankruptcy Rules.

12 **2.1.24** **“Bankruptcy Schedules”** means the Schedules of Assets and Liabilities
13 and Statement of Financial Affairs filed by the Debtor in the Case, as they may have been
14 amended and as they may be amended hereafter from time to time.

15 **2.1.25** **“Bar Date”** means the last date for Creditors whose Claims are not
16 scheduled, or whose Claims are scheduled in the Bankruptcy Schedules as disputed,
17 contingent, unliquidated or unknown as to amount, to file Proofs of Claim. The Bar Date
18 for filing a Proof of Claim on account of a General Unsecured Claim in the Case was
19 May 1, 2012.

20 **2.1.26** **“Bello”** means Michael R. Bello, an individual.

21 **2.1.27** **“Bello Construction”** means Bello Construction Company.

22 **2.1.28** **“Beneficiaries”** means, with respect to the Liquidation Trust and in
23 accordance with Treasury Regulation section 301.7701-4(d), the beneficiaries of the
24 Liquidation Trust that are the holders of Liquidation Trust Interests.

25 **2.1.29** **“Business Day”** means any day other than a Saturday, Sunday or a legal
26 holiday (as defined in Rule 9006(a) of the Federal Bankruptcy Rules).

27 **2.1.30** **“Case”** means the case under Chapter 11 of the Bankruptcy Code
28 commenced by the Debtor on the Petition Date and bearing Case No. 8:12-bk-10105 CB.

1 **2.1.31** “**Case Closing Date**” means the date on which the Bankruptcy Court
2 enters a Final Decree closing the Case, in accordance with section 350 of the Bankruptcy
3 Code.

4 **2.1.32** “**Cash**” means cash or cash equivalents including, but not limited to,
5 bank deposits, checks or other similar forms of payment or exchange.

6 **2.1.33** “**Causes of Action**” means any and all claims, demands, counterclaims,
7 setoff rights, recoupment rights, defenses, interests, rights, actions, causes of action and
8 suits of the Debtor or the Estate, of any kind or character whatsoever, arising prior to the
9 Effective Date, in contract or in tort, at law or in equity or under any other theory of law,
10 that the Debtor or the Debtor’s Estate has or asserts, or may have or assert, against third
11 parties, whether or not the subject of litigation or otherwise asserted as of the Effective
12 Date, and which have not been settled or otherwise resolved by Final Order as of the
13 Effective Date, including but not limited to: (a) Avoidance Actions; (b) claims for refunds,
14 rebates or returns of deposits of any nature, including, without limitation, any Tax or
15 insurance refunds; (c) claims to recover accounts receivable or other payables; (d) rights to
16 any Affiliate Distributions; and (e) any other claims, rights, interests or demands which
17 may be asserted against persons or entities.

18 **2.1.34** “**Claim**” means a “claim” against the Debtor, as such term is defined in
19 section 101(5) of the Bankruptcy Code.

20 **2.1.35** “**Claims Objection Deadline**” means the latest of the following dates:
21 (a) the one hundred eightieth (180th) day after the Effective Date; (b) with respect to a
22 specific Claim, the ninetieth (90th) day after a Proof of Claim with respect to such Claim is
23 filed by a Creditor; or (c) with respect to a specific Claim, such greater period of limitation
24 as may be fixed or extended by the Bankruptcy Court or by agreement of the Creditor
25 asserting such Claim.

26 **2.1.36** “**Class**” means a grouping of Claims or the Interest, as classified in
27 Article IV of this Plan.
28

1 **2.1.37 “Class 3 Liquidation Trust Interest”** means a non-certificated
2 beneficial interest in the Liquidation Trust granted to the holders of Class 3 Claims, which
3 shall entitle such holder to (a) a Pro Rata share, calculated together with all Allowed
4 Priority Wage Claims, of the Net Liquidation Trust Proceeds plus Post-Petition Interest and
5 (b) a Pro Rata Share, calculated together with all Allowed Priority Wage Claims
6 (calculated after deductions for any payments received from the Net Liquidation Trust
7 Proceeds), all Allowed Priority Non-Tax Claims (calculated after deductions for any
8 payments received from the Net Liquidation Trust Proceeds), and all Allowed General
9 Unsecured Claims, of the GUC Trust Preference; provided however, that in no event shall
10 any holder of an Allowed Priority Wage Claim be entitled to receive payments that exceed
11 the Allowed amount of such Holder’s Priority Wage Claim plus Post-Petition Interest.

12 **2.1.38 “Class 4 Liquidation Trust Interest”** means a non-certificated
13 beneficial interest in the Liquidation Trust granted to the holders of Class 4 Claims, which
14 shall entitle such holder to (a) a Pro Rata share, calculated together with all Allowed
15 Priority Non-Tax Claims, of the Net Liquidation Trust Proceeds after the payment in full of
16 all Allowed Priority Wage Claims plus Post-Petition Interest and (b) a Pro Rata Share,
17 calculated together with all Allowed Priority Wage Claims (calculated after deductions for
18 any payments received from the Net Liquidation Trust Proceeds), Allowed Priority Non-
19 Tax Claims (calculated after deductions for any payments received from the Net
20 Liquidation Trust Proceeds), and Allowed General Unsecured Claims, of the GUC Trust
21 Preference; provided, however, that in no event shall any holder of an Allowed Priority
22 Non-Tax Claim be entitled to receive payments that exceed the Allowed amount of such
23 Holder’s Priority Non-Tax Claim plus Post-Petition Interest.

24 **2.1.39 “Class 5 Liquidation Trust Interest”** means a non-certificated
25 beneficial interest in the Liquidation Trust granted to the holders of Class 5 Claims, which
26 shall entitle such holder to (a) a Pro Rata share, calculated together with all Allowed
27 General Unsecured Claims, of the Net Liquidation Trust Proceeds after the payment in full
28 of all Allowed Priority Wage Claims and Allowed Priority Non-Tax Claims plus Post-

1 Petition Interest and (b) a Pro Rata Share, calculated together with all Allowed Priority
2 Wage Claims (calculated after deductions for any payments received from the Net
3 Liquidation Trust Proceeds), Allowed Priority Non-Tax Claims (calculated after deductions
4 for any payments received from the Net Liquidation Trust Proceeds), and Allowed General
5 Unsecured Claims, of the GUC Trust Preference; provided, however, that in no event shall
6 any holder of an Allowed General Unsecured Claim be entitled to receive payments that
7 exceed the Allowed amount of such Holder's General Unsecured Claim plus Post-Petition
8 Interest.

9 **2.1.40** "Comerica" means Comerica Bank.

10 **2.1.41** "Committee" means the Official Committee of Unsecured Creditors
11 appointed in the Case by the United States Trustee.

12 **2.1.42** "Confirmation" means the entry of the Confirmation Order by the
13 Bankruptcy Court.

14 **2.1.43** "Confirmation Date" means the date on which the Bankruptcy Court
15 enters the Confirmation Order on its docket.

16 **2.1.44** "Confirmation Hearing" means the hearing before the Bankruptcy
17 Court to consider the confirmation of this Plan pursuant to section 1128(a) of the
18 Bankruptcy Code, as such hearing may be continued from time to time.

19 **2.1.45** "Confirmation Hearing Date" means the first date on which the
20 Bankruptcy Court holds the Confirmation Hearing.

21 **2.1.46** "Confirmation Order" means the order of the Bankruptcy Court
22 confirming this Plan under section 1129 of the Bankruptcy Code.

23 **2.1.47** "Creditor" means the holder of a Claim against the Debtor.

24 **2.1.48** "Debtor" means Walldesign, Incorporated, the debtor in the Case.

25 **2.1.49** "Debtor Collateral" means any property or interest in property of the
26 Estate subject to a Lien of a Secured Creditor that is not subject to avoidance under the
27 Bankruptcy Code or otherwise invalid under the Bankruptcy Code or applicable federal or
28 state law.

1 **2.1.50** “**Deficiency Claim**” means that portion of a Claim that is in excess of the
2 value of the Debtor Collateral which is security for the repayment of such Claim, calculated
3 in accordance with the provisions of section 506 of the Bankruptcy Code.

4 **2.1.51** “**De Minimis Distribution**” has the meaning set forth in Section 7.2.3 of
5 this Plan.

6 **2.1.52** “**Disclosure Statement**” means that Disclosure Statement
7 Accompanying Chapter 11 Plan relating to this Plan, including, without limitation, all
8 exhibits and schedules thereto, as approved by the Bankruptcy Court pursuant to
9 section 1125 of the Bankruptcy Code, as may be amended, modified or supplemented from
10 time to time in accordance with the provisions of the Bankruptcy Code and Bankruptcy
11 Rules.

12 **2.1.53** “**Disputed Claim**” means (a) any Claim or portion of a Claim as to
13 which an objection to the allowance thereof has been interposed by the deadline set herein
14 or such later date as may be fixed by the Bankruptcy Court, which objection has not been
15 withdrawn or determined by Final Order; (b) any Claim for which a Proof of Claim is
16 required to be filed and no such Proof of Claim is filed or, if filed, is filed after the
17 applicable Bar Date for such Claim; and (c) any contingent Claim or unliquidated Claim.
18 To the extent that an objection relates to the allowance of only a part of a Claim, such
19 Claim shall be a Disputed Claim only to the extent of the objection and shall be deemed an
20 Allowed Claim as to the portion for which no timely objection is made.

21 **2.1.54** “**Disputed Claims Reserve**” has the meaning set forth in Section 8.3.3 of
22 this Plan.

23 **2.1.55** “**Disputed Class ‘***’ Claim**” means a Disputed Claim classified in the
24 specified Class.

25 **2.1.56** “**Distribution**” means any transfer of Cash under the Plan to the holder
26 of an Allowed Claim.

27 **2.1.57** “**Effective Date**” means the date the conditions set forth in Section 6.3 of
28 this Plan are satisfied or waived.

1 **2.1.58** “**Effective Date Cash Balance**” means the Cash on hand as of the
2 Effective Date.

3 **2.1.59** “**Estate**” means the estate created in the Case under section 541 of the
4 Bankruptcy Code.

5 **2.1.60** “**Expenses**” has the meaning set forth in Section 2.1.89 of this Plan.

6 **2.1.61** “**Federal Bankruptcy Rules**” means the Federal Rules of Bankruptcy
7 Procedure, as now in effect and as may be hereafter amended.

8 **2.1.62** “**Final Decree**” has the meaning set forth in Section 6.20 of this Plan.

9 **2.1.63** “**Final Order**” means an order or judgment of the Bankruptcy Court or
10 other applicable court, as entered on the applicable docket, that has not been reversed,
11 stayed, modified or amended, and as to which the time to appeal, petition for certiorari, or
12 move for reargument or rehearing has expired and as to which no appeal, petition for
13 certiorari, or other proceedings for reargument or to obtain a rehearing shall then be
14 pending or as to which any right to appeal, petition for certiorari, reargue, or obtain a
15 rehearing shall have been waived in writing in form and substance satisfactory to the
16 Committee or to the Liquidation Trustee, or, in the event that an appeal, writ of certiorari,
17 or proceeding for reargument or rehearing of such order or judgment has been sought, such
18 order or judgment shall have been affirmed by the highest court to which such order or
19 judgment was appealed, or certiorari has been denied, or from which reargument or
20 rehearing was sought, and the time to take any further appeal, petition for certiorari or
21 move for reargument or rehearing shall have expired.

22 **2.1.64** “**General Unsecured Claim**” means any Claim that is not an
23 Administrative Claim, a Priority Tax Claim, a Priority Non-Tax Claim, or a Secured Claim,
24 including, without limitation, a Rejection Claim, a Deficiency Claim or an Avoidance
25 Action Payment Claim.

26 **2.1.65** “**GUC Trust Preference**” means an amount equal to 80% of any net
27 amount (after payment of any fees or expenses) recovered from the settlement or
28 prosecution of the Insider Causes of Action.

1 **2.1.66** “**Initial Distribution Date**” has the meaning set forth in Section 7.2.8 of
2 this Plan.

3 **2.1.67** “**Insider**” shall have the meaning set forth in section 101(31) of the
4 Bankruptcy Code.

5 **2.1.68** “**Insider Causes of Action**” means all Causes of Actions against Bello
6 and all other Insiders of the Debtor.

7 **2.1.69** “**Interest**” means the interest of the Debtor in, and the Debtor’s claims
8 to, assets and properties of the Estate.

9 **2.1.70** “**Internal Revenue Code**” means the Internal Revenue Code of 1986,
10 now in effect and as may be hereafter amended.

11 **2.1.71** “**Lien**” means any lien, security interest, mortgage, deed of trust,
12 encumbrance, pledge or other charge against assets or properties of the Debtor.

13 **2.1.72** “**Liquidation Trust**” means the Liquidation Trust created pursuant to
14 this Plan and the Liquidation Trust Agreement. The Liquidation Trust is to be organized
15 and established as a trust for the benefit of the Beneficiaries and is intended to qualify as a
16 Liquidation Trust within the meaning of Treasury Regulation section 301.7707-4(d).

17 **2.1.73** “**Liquidation Trust Agreement**” means the Liquidation Trust
18 Agreement, by and between the Debtor and the Liquidation Trustee to be entered into
19 pursuant to the Plan and the Confirmation Order, substantially in the form appended as an
20 exhibit to the Disclosure Statement.

21 **2.1.74** “**Liquidation Trust Assets**” means all of the assets, properties, rights,
22 claims and interests of the Estate of whatever nature whatsoever, and shall include, without
23 limitation, the following assets, properties, rights, claims and interests transferred to and
24 administered by the Liquidation Trustee pursuant to this Plan for the purpose of funding
25 Distributions to holders of Allowed Claims and paying the Post-Effective Date Plan
26 Expenses: (a) any personal property asset of the Estate, tangible or intangible; (b) all
27 Causes of Action, including, without limitation, Avoidance Actions, and Insider Causes of
28 Action, and any and all Net Recoveries with respect to any such causes of action; and

1 (c) any other Unencumbered Asset, property, right, claim or interest of the Debtor that is
2 not expressly deemed to be an abandoned Asset pursuant to section 554 of the Bankruptcy
3 Code. For the avoidance of doubt, only amounts other than the Minimum General
4 Unsecured Claims Distribution that are received from the settlement or prosecution of the
5 Insider Causes of Action shall constitute Liquidation Trust Assets. In accordance with the
6 provisions of Section 6.8 of this Plan, title to the Liquidation Trust Assets shall be held by
7 the Liquidation Trust.

8 **2.1.75 “Liquidation Trust Fund”** means a segregated, interest-bearing account
9 established at a financial institution which is an authorized depository under guidelines
10 promulgated by the United States Trustee and in effect on the Effective Date, which shall
11 contain all Cash available in the Liquidation Trust for the Liquidation Trustee to make
12 Distributions under this Plan after the establishment and funding of the Reserves, and shall
13 include all Cash on hand in the Estate on the Effective Date, which funds shall be
14 transferred to the Liquidation Trustee by the Debtor on the Effective Date, and all funds
15 received by the Liquidation Trustee from any source for the purpose of funding
16 Distributions to holders of Allowed Claims.

17 **2.1.76 “Liquidation Trust Interests”** means, collectively, the Class 3
18 Liquidation Trust Interests, the Class 4 Liquidation Trust Interests, and the Class 5
19 Liquidation Trust Interests.

20 **2.1.77 “Liquidation Trustee”** means the trustee of the Liquidation Trust, who
21 has the powers and responsibilities set forth in this Plan, the Confirmation Order, and the
22 Liquidation Trust Agreement, or any successor trustee appointed pursuant to the
23 Liquidation Trust Agreement.

24 **2.1.78 “Liquidation Trustee Disclosures”** means written disclosures to be filed
25 with the Bankruptcy Court at least ten (10) Business Days prior to the Confirmation
26 Hearing disclosing the identity of the Liquidation Trustee, his or her credentials, any and
27 all relevant affiliations, connections, and actual or potential conflicts of interest, and the
28 engagement agreement setting forth the terms of his or her retention.

1 **2.1.79** “Loan Documents” has the meaning set forth in Section 13.20 of this
2 Plan.

3 **2.1.80** “Local Bankruptcy Rules” means the Local Bankruptcy Rules
4 applicable to cases pending before the Bankruptcy Court, as now in effect and as may be
5 hereafter amended.

6 **2.1.81** “LT Advisory Board” means the Committee, as it shall be reconstituted
7 and function after the Effective Date, pursuant to the provisions of this Plan and the
8 Liquidation Trust Agreement.

9 **2.1.82** “Net Liquidation Trust Proceeds” means the Net Proceeds plus the Net
10 Recoveries after the payment in full of all Allowed Administrative Claims, Allowed
11 Priority Tax Claims, and any reasonable reserves established by the Liquidation Trustee for
12 administering the Liquidation Trust, but shall not include the GUC Trust Preference.

13 **2.1.83** “Net Proceeds” means the gross sale proceeds received by the
14 Liquidation Trustee from the sale, grant, conveyance, assignment, lease, encumbrance,
15 disposition or other transfer (as that term is defined in section 101(54) of the Bankruptcy
16 Code) of a Liquidation Trust Asset, less the Post-Effective Date Plan Expenses Reserve.

17 **2.1.84** “Net Recoveries” means all Cash proceeds received before and after the
18 Effective Date in connection with or as a result of the assertion, litigation or settlement of
19 any Cause of Action, less any reasonable attorneys’ fees and costs, other reasonable
20 Professional fees and costs, and any other reasonable fees, costs and expenses incurred by
21 the Liquidation Trustee and the LT Advisory Board, where applicable, in connection
22 therewith. The determination of the reasonableness of any such fees and costs shall be
23 made reasonably by the Liquidation Trustee, and, in the event that a dispute should arise
24 regarding the reasonableness of any such fees and costs, the merits of such dispute shall be
25 determined by the Bankruptcy Court.

26 **2.1.85** “Ordinary Course Administrative Claim” means an Administrative
27 Claim allowable under section 503(b) of the Bankruptcy Code that is less than \$10,000.00
28 and otherwise incurred in the ordinary course of the Debtor’s financial or personal affairs,

1 exclusive of any Pre-Effective Date Professional Fee Claims, Administrative Tax Claims
2 and United States Trustee Fees.

3 **2.1.86** **“Petition Date”** means January 4, 2012, the date on which the Debtor
4 filed its voluntary petition commencing the Case.

5 **2.1.87** **“Plan”** means this Chapter 11 Plan, including, without limitation, all
6 exhibits, supplements, appendices, and schedules hereto, either in its present form or as it
7 may be altered, amended, or modified from time to time.

8 **2.1.88** **“Plan Completion Certification”** has the meaning set forth in
9 Section 6.19 of this Plan.

10 **2.1.89** **“Post-Effective Date Notice Parties”** has the meaning set forth in
11 Section 6.19 of this Plan.

12 **2.1.90** **“Post-Effective Date Plan Expenses”** means all voluntary and
13 involuntary costs, expenses, charges, obligations, or liabilities of any kind or nature,
14 whether matured, unmatured, non-contingent, contingent, liquidated, or unliquidated
15 (collectively, **“Expenses”**) incurred by the LT Advisory Board or by the Liquidation
16 Trustee related to their performing their respective duties on behalf of holders of Allowed
17 Claims under this Plan, including, but not limited to, the following Expenses: (a) the
18 Expenses associated with administering the Liquidation Trust, including any taxes assessed
19 against the Liquidation Trust; (b) the Expenses associated with the Liquidation Trustee
20 making the Distributions required by this Plan; (c) any reasonable Expenses incurred by a
21 member of the LT Advisory Board, including, without limitation, any attorneys’ fees or
22 other professional fees incurred by it and for which it is entitled to be indemnified; (d) the
23 Expenses of independent contractors and Professionals providing services to the
24 Liquidation Trustee or the LT Advisory Board; (e) the Expenses, if any, associated with the
25 Liquidation Trustee’s indemnity obligations, the purchase of errors and omissions
26 insurance and/or other forms of indemnification; and (f) the fees of the Liquidation Trustee,
27 and the reimbursement of expenses, to which the Liquidation Trustee is entitled under this
28 Plan.

1 **2.1.91** “**Post-Effective Date Plan Expenses Reserve**” means Cash in an
2 amount to be used for the payment of any reasonable estimated Post-Effective Date Plan
3 Expenses, including: (a) any commissions, including, without limitation, brokers’
4 commissions; (b) any escrow fees, title fees, or other costs of sale; (c) the amount of any
5 Liens encumbering such Liquidation Trust Asset; (d) any cost or expense incurred by the
6 Liquidation Trustee with respect to such transfer of such Liquidation Trust Asset,
7 including, without limitation, any fees and costs of a Professional; and (e) a reserve for any
8 anticipated Taxes arising from such transfer of such Liquidation Trust Asset, as determined
9 reasonably by the Liquidation Trustee..

10 **2.1.92** “**Post-Petition Interest**” means, with respect to an Allowed Priority
11 Wage Claim, Allowed Priority Non-Tax Claim, or Allowed General Unsecured Claim,
12 interest, from and after the Petition Date and through the date on which such Allowed
13 Claim is paid in full, accruing at the applicable contract or statutory rate or, if no such rate
14 applies, at the federal judgment rate, as set forth in 28 U.S.C. § 1961(a), in effect as of the
15 Effective Date.

16 **2.1.93** “**Pre-Effective Date Professional**” means a person employed in the
17 Case prior to the Effective Date pursuant to an order of the Bankruptcy Court in accordance
18 with sections 327 or 1103 of the Bankruptcy Code.

19 **2.1.94** “**Pre-Effective Date Professional Fee Claim**” means:

20 (a) A Claim of a Pre-Effective Date Professional under sections 327, 328,
21 330, 331 or 1103 of the Bankruptcy Code for compensation for services rendered or
22 expenses incurred prior to the Effective Date on behalf of the Estate; or

23 (b) A Claim, arising prior to the Effective Date, either under
24 section 503(b)(4) of the Bankruptcy Code or under section 503(b)(3)(D) of the Bankruptcy
25 Code.

26 **2.1.95** “**Priority Non-Tax Claim**” means a Claim, other than an Administrative
27 Claim or a Priority Tax Claim entitled to priority in right of payment under section 507(a)
28 of the Bankruptcy Code.

1 **2.1.96** “Priority Tax Claim” means a Claim entitled to priority under
2 section 507(a)(8) of the Bankruptcy Code.

3 **2.1.97** “Professional” means any attorney, accountant, appraiser, auctioneer,
4 broker, financial consultant, expert or other professional person.

5 **2.1.98** “Proof of Claim” means a statement under oath filed in the Case by a
6 Creditor in which the Creditor sets forth the amount claimed to be owed to it and detail
7 sufficient to identify the basis for the Claim, in accordance with Rule 3001 of the Federal
8 Bankruptcy Rules.

9 **2.1.99** “Pro Rata” means proportionately so that the ratio of (a) the amount of
10 consideration distributed on account of an Allowed Claim to (b) the amount of the Allowed
11 Claim is the same as the ratio of (x) the amount of consideration available for distribution
12 on account of all Claims in the Class in which that Allowed Claim is included to (y) the
13 amount of all Claims in that Class.

14 The Pro Rata formula is illustrated as follows:

(a) Amount of consideration distributed to a holder of an Allowed Claim	=	(x) Total consideration available for distribution to holders of Claims of that Class
(b) Amount of such Allowed Claim		(y) Amount of all Claims in that Class

18 For the purpose of the application of this definition, in calculating the Distributions
19 to be made under this Plan, the Liquidation Trustee shall establish the Disputed Claim
20 Reserve in accordance with the provisions of Section 8.3.3 of this Plan.

21 **2.1.100** “Rejection Claim” means any General Unsecured Claim based upon or
22 arising from the rejection of an executory contract or unexpired lease pursuant to a Final
23 Order of the Bankruptcy Court or pursuant to this Plan.

24 **2.1.101** “Representatives” has the meaning set forth in Section 6.11 of this
25 Plan.

26 **2.1.102** “Reserves” means, collectively, the Disputed Claims Reserve, the Post-
27 Effective Date Plan Expenses Reserve, and the Unclaimed Property Reserve.

28

1 **2.1.103** “**Secured Claim**” means a Claim that is secured by a Lien against
2 property in which the Estate has an interest, or that is subject to setoff under section 553 of
3 the Bankruptcy Code, to the extent of the value, determined under section 506(a) of the
4 Bankruptcy Code, of the Secured Creditor’s interest in the Estate’s interest in the Debtor
5 Collateral securing the Claim, or to the extent of the amount subject to setoff, whichever is
6 applicable.

7 “**Secured Creditor**” means the holder of a Secured Claim.

8 **2.1.104** “**Subordinated Claims**” means all Claims that are subordinated
9 pursuant to section 510 of the Bankruptcy Code.

10 **2.1.105** “**Supplemental Administrative Expense**” means an Administrative
11 Expense incurred on or after [December ____, 2012].

12 **2.1.106** “**Supplemental Administrative Expense Bar Date**” shall have the
13 meaning set forth in Section 3.1.2 of the Plan.

14 **2.1.107** “**Tax**” means any tax, charge, fee, levy, or other assessment by any
15 federal, state, local or foreign taxing authority, including, without limitation, income,
16 excise, property, sales, transfer, employment, payroll, franchise, profits, license, use, ad
17 valorem, estimated, severance, stamp, occupation and withholding tax. “Tax” shall include
18 any interest, penalties or additions attributable to, or imposed on or with respect to, such
19 assessments.

20 **2.1.108** “**Tax Claim**” means any Claim, pre-petition or post-petition, relating to
21 a Tax.

22 **2.1.109** “**Unclaimed Property**” has the meaning set forth in Section 7.2.7 of
23 this Plan.

24 **2.1.110** “**Unclaimed Property Reserve**” has the meaning set forth in
25 Section 7.2.7 of this Plan.

26 **2.1.111** “**Unencumbered Assets**” means any assets, property, rights, claims or
27 interests that are not encumbered by a Lien.
28

1 **2.1.112** “United States Trustee” means the Office of the United States Trustee
2 for the Central District of California.

3 **2.1.113** “United States Trustee Fees” means all fees and charges assessed
4 against the Debtor or the Liquidation Trust by the United States Trustee and due pursuant
5 to section 1930 of title 28 of the United States Code.

6 **2.1.114** “VFS” means VFS Financial, a subsidiary of GE Capital.

7 **2.2** Rules of Interpretation. For the purpose of this Plan, unless otherwise provided in
8 this Plan, (a) the rules of construction set forth in section 102 of the Bankruptcy Code apply to this
9 Plan; (b) Rule 9006(a) of the Federal Bankruptcy Rules applies when computing any time period
10 under this Plan; (c) a term that is used in this Plan and that is not defined in this Plan has the
11 meaning attributed to that term, if any, in the Bankruptcy Code or in the Bankruptcy Rules; (d) the
12 definition given to any term or provision in this Plan supersedes any different meaning that may be
13 given to that term or provision in the Disclosure Statement; (e) whenever it is appropriate from the
14 context, each term, whether stated in the singular or the plural, includes both the singular and the
15 plural; (f) each pronoun stated in the masculine, feminine or neuter includes each of the masculine,
16 feminine and neuter; (g) any reference to an exhibit, schedule, instrument, or other document
17 means such exhibit, schedule, instrument, or other document as it has been, or may be, amended,
18 modified, restated or supplemented as of the Confirmation Date, and any such exhibit, schedule,
19 instrument or other document shall be deemed to be included in this Plan, regardless of when it is
20 filed; (h) the phrases “under this Plan,” “hereof,” “hereto,” “hereunder,” and similar words or
21 phrases, refer to this Plan in its entirety rather than to only a portion of this Plan; (i) unless
22 otherwise indicated, all references in this Plan to sections, articles or exhibits are references to
23 sections, articles or exhibits in this Plan; (j) section captions and headings are used for convenience
24 only and do not affect the meaning of this Plan; and (k) any reference to a Creditor or to the Debtor
25 includes that entity’s successor and assigns.

26 **2.3** Exhibits. All exhibits to this Plan are incorporated into and are a part of this Plan
27 as if set forth in full herein.

28

1 III.

2 **UNCLASSIFIED CLAIMS**

3 As required by the Bankruptcy Code, this Plan places Claims and the Interest into various
4 Classes according to their respective legal rights and interests, including their respective rights to
5 priority. However, in accordance with the provisions of section 1123(a)(1) of the Bankruptcy
6 Code, Administrative Claims and Priority Tax Claims are deemed “unclassified.” These Claims
7 are not considered impaired under section 1124 of the Bankruptcy Code, and the holders of these
8 Claims do not vote on this Plan, because these Claims are automatically entitled to specific
9 treatment provided for them in the Bankruptcy Code. Accordingly, the Debtor has not placed
10 Administrative Claims and Priority Tax Claims in a Class. The treatment of these unclassified
11 Claims is as provided below.

12 **3.1 Allowed Administrative Claims.** Administrative Claims generally are Claims for
13 the expenses of administering the Debtor’s Case that are allowed under section 503(b) of the
14 Bankruptcy Code. Administrative Claims also include Claims provided for by section 503(b)(9) of
15 the Bankruptcy Code. The Bankruptcy Code requires that all Administrative Claims be paid on
16 the Effective Date of this Plan, unless a particular Creditor agrees to a different treatment of its
17 Administrative Claim. The treatment of Administrative Claims under this Plan is as described
18 below. All Allowed Administrative Claims shall be paid by the Liquidation Trustee from the
19 Liquidation Trust Fund. It is unlikely that the Estate will have sufficient funds on hand at the time
20 of the Effective Date to pay all Allowed Administrative Claims, which the Debtor anticipates to
21 consist primarily of the professionals employed in this case. It is anticipated that the professionals
22 will work with the estate as to the timing of satisfaction of their allowed claims.

23 **3.1.1 Payment.** Except to the extent that the holder of an Allowed Administrative
24 Claim agrees to a less favorable treatment of its Allowed Administrative Claim, and,
25 subject to the Administrative Claims Bar Date and the Supplemental Administrative Claims
26 Bar Date set forth in Section 3.1.2 hereof, each holder of an Allowed Administrative Claim
27 (other than a Pre-Effective Date Professional Fee Claim) shall receive, in full satisfaction,
28 discharge, exchange and release of its Allowed Administrative Claim, Cash in an amount

1 equal to such Allowed Administrative Claim, on the latest of (i) the forty-fifth (45th) day
2 after the Effective Date, (ii) the thirtieth (30th) Business Day after the date upon which
3 such Administrative Claim becomes an Allowed Administrative Claim, or (iii) the date
4 upon which such Allowed Administrative Claim becomes due according to its terms;
5 provided, however, that an Ordinary Course Administrative Claim shall be paid in full in
6 accordance with the terms and conditions of the agreements giving rise to such Ordinary
7 Course Administrative Claim.

8 **3.1.2 Supplemental Administrative Claims Bar Date.** Except for Pre-Effective
9 Date Professional Fee Claims and United States Trustee Fees, the bar date for asserting
10 Supplemental Administrative Claims is thirty (30) days after the Effective Date.

11 **3.1.3 Deadline for Objections.** All objections to the allowance of Administrative
12 Claims that are subject to the Administrative Claims Bar Date, or the Supplemental
13 Administrative Claims Bar Date, must be filed by the Liquidation Trustee by no later than
14 forty-five (45) days after the Administrative Claims Bar Date (the “**Administrative**
15 **Claims Objection Deadline**”). The Administrative Claims Objection Deadline may be
16 extended for a one-time thirty (30) day period by the Liquidation Trustee by filing a notice
17 of the extended Administrative Claims Objection Deadline with the Bankruptcy Court.
18 Thereafter, the Administrative Claims Objection Deadline may be further extended only by
19 an order of the Bankruptcy Court. If the Liquidation Trustee fails to file, by the
20 Administrative Claims Objection Deadline, an objection to an Administrative Claim that
21 must be filed, and that is filed, by the Administrative Claims Bar Date or Supplemental
22 Administrative Claims Bar Date, as applicable, such Administrative Claim shall be deemed
23 allowed as of the Administrative Claims Objection Deadline.

24 **3.1.4 United States Trustee Fees.** United States Trustee Fees shall be paid after
25 the Effective Date by the Liquidation Trustee, from Liquidation Trust Assets, when due in
26 accordance with applicable law until the Case Closing Date.

27 **3.1.5 Pre-Effective Date Professional Fee Claims.** Each Pre-Effective Date
28 Professional seeking from the Bankruptcy Court an award with respect to a Pre-Effective

1 Date Professional Fee Claim shall file its final application for allowance of compensation
2 for services rendered and reimbursement of expenses incurred through the Effective Date
3 by no later than the forty-fifth (45th) day after the Effective Date or such later date as may
4 be fixed by the Bankruptcy Court. Such Pre-Effective Date Professional shall receive, in
5 full satisfaction, discharge, exchange and release of its Pre-Effective Date Professional Fee
6 Claim, Cash in such amounts as are allowed by the Bankruptcy Court. All objections to
7 allowance of Pre-Effective Date Professional Fee Claims must be filed and served timely
8 in accordance with the requirements of the Bankruptcy Rules.

9 **3.2 Allowed Priority Tax Claims.** Except to the extent that a holder of an Allowed
10 Priority Tax Claim agrees to a less favorable treatment of its Allowed Priority Tax Claim, each
11 holder of an Allowed Priority Tax Claim shall receive, in full satisfaction, discharge, exchange and
12 release of its Allowed Priority Tax Claim, cash payments of a total value, as of the Effective Date,
13 equal to the Allowed Priority Tax Claim over a period ending not later than five years after the
14 order for relief with simple interest thereon calculated at the underpayment rate specified in
15 26 U.S.C. § 6621 (determined without regard to 26 U.S.C. § 6621(c)) as of the Effective Date or
16 such higher rate as of the Effective Date as may be required by section 511(a) of the Bankruptcy
17 Code, as determined by the Bankruptcy Court pursuant to the Confirmation Order. All Allowed
18 Priority Tax Claims shall be paid by the Liquidation Trustee from the Liquidation Trust Fund.

19 IV.

20 **CLASSIFICATION OF CLAIMS AND INTEREST**

21 **4.1 Overview.** As required by the Bankruptcy Code, this Plan places Claims and the
22 Interest into Classes according to their respective legal rights and interests, including their
23 respective rights to priority. In Section 4.2 hereof, the Debtor lists each Class established under
24 this Plan and states whether each Class is impaired or is unimpaired by this Plan. A Class is
25 “unimpaired” by this Plan if this Plan leaves unaltered the legal, equitable and contractual rights to
26 which the holders of Claims in the Class are entitled or the holder of the Interest is entitled, as
27 provided in section 1124 of the Bankruptcy Code. Article V of this Plan sets forth the treatment
28 that each Class will receive under this Plan.

1 Pursuant to this Plan, a Claim shall be deemed classified in a particular Class only to the
2 extent that the Claim qualifies within the description of that Class and shall be deemed classified in
3 another Class or Classes to the extent that any remainder of the Claim qualifies within the
4 description of such other Class or Classes. A Claim is classified in a particular Class only to the
5 extent that the Claim is an Allowed Claim in that Class and has not been paid, released or
6 otherwise satisfied prior to the Effective Date.

7 **4.2 Designation of Classes.** This Plan designates the following Classes of Claims and
8 Interests:

9 **4.2.1 Allowed Claims.**

10 4.2.1.1 Class 1: The Allowed Secured Claim of Comerica. This Class is
11 unimpaired by this Plan.

12 4.2.1.2 Class 2: The Allowed Secured Claim of VFS. This Class is
13 unimpaired by this Plan.

14 4.2.1.3 Class 3: Allowed Secured Claim of Bello Construction. This
15 Class is unimpaired by this Plan.

16 4.2.1.4 Class 4: Any Allowed Priority Non-Tax Claims. This Class is
17 impaired by this Plan.

18 4.2.1.5 Class 5: The Allowed General Unsecured Claims. This Class is
19 impaired by this Plan.

20 4.2.1.6 Class 6: The Allowed Subordinated Claims. This Class is
21 impaired by this Plan.

22 4.2.1.7

23 **4.2.2 Interest.**

24 4.2.2.1 Class 7: The Interest in the Debtor. This Class is impaired by
25 this Plan.

26 **4.3 Summary of Classification.** The following table summarizes the Classes of
27 Claims and the Interest established by this Plan:
28

CLASS	DESCRIPTION	IMPAIRED/ UNIMPAIRED	VOTING STATUS
Class 1	Allowed Secured Claim of Comerica	Unimpaired	No (deemed to accept)
Class 2	Allowed Secured Claim of VFS	Unimpaired	No (deemed to accept)
Class 3	Allowed Secured Claim of Bello Construction	Unimpaired	No (deemed to accept)
Class 4	Any Allowed Priority Non-Tax Claims	Impaired	Entitled to Vote on Plan
Class 5	Allowed General Unsecured Claims	Impaired	Entitled to Vote on Plan
Class 6	Subordinated Claims	Impaired	No (deemed to reject)
Class 7	Interests	Impaired	No (deemed to reject)

As set forth above, Classes 3 through 5 are impaired and receive property under this Plan; thus, any holders of Claims in these Classes are entitled to vote with respect to this Plan. The holders of Claims in Class 6 and Interests in Class 7 do not receive any property under this Plan and thus Classes 6 and 7 are deemed to reject this Plan. Accordingly, the holders of Claims and Interests in Classes 6 and 7 are not entitled to vote with respect to this Plan.

The treatment of Claims under this Plan is in full and complete satisfaction of the legal, contractual, and equitable rights that each Creditor has or may have against the Debtor or its property. This treatment supersedes and replaces any agreements or rights which those entities have against the Debtor or its property. **NO DISTRIBUTIONS SHALL BE MADE, AND NO RIGHTS SHALL BE RETAINED UNDER THIS PLAN, ON ACCOUNT OF ANY CLAIM THAT IS NOT AN ALLOWED CLAIM.**

The treatment of the Interest is in full and complete satisfaction of the legal, contractual and equitable rights that the Debtor has or may have in the Case on account of the Interest.

V.

TREATMENT OF CLASSES UNDER THIS PLAN

All Claims and rights of the members of Classes established by this Plan, as of the Effective Date, shall be governed by the terms of this Plan only, and all prior agreements shall be null and void. The treatment provided herein shall be in full satisfaction of each Creditor's Allowed Claim. The following sets forth the treatment of Classes established by this Plan.

5.1 Class 1 – Allowed Secured Claim of Comerica.

5.1.1 Classification. Class 1 consists of the Allowed Secured Claim of Comerica.

1 **5.1.2 Treatment.** Comerica shall retain, without alteration or modification
2 hereunder, its Lien encumbering the Debtor Collateral in which Comerica has a Lien, and
3 shall be paid from the liquidation of the Debtor Collateral in which Comerica has a Lien.
4 In the event that Comerica has the right to assert against the Debtor any Deficiency Claim,
5 unless Comerica makes a valid election under section 1111(b) of the Bankruptcy Code, any
6 Allowed Deficiency Claim of Comerica shall be treated as an Allowed Class 5 General
7 Unsecured Claim.

8 **5.1.3 Voting.** Claims in Class 1 are unimpaired by this Plan and holders of Class
9 1 Claims are conclusively deemed to have accepted the Plan pursuant to section 1126(f) of
10 the Bankruptcy Code. Therefore, holders of Class 1 Claims are not entitled to vote to
11 accept or reject the Plan.

12 **5.2 Class 2 – The Secured Claim of VFS.**

13 **5.2.1 Classification.** Class 2 consists of the Allowed Secured Claim of VFS.

14 **5.2.2 Treatment.** VFS shall retain, without alteration or modification hereunder,
15 its Lien encumbering the Debtor Collateral in which VFS has a Lien, and shall be paid
16 from the liquidation of the Debtor Collateral in which VFS has a Lien. In the event that
17 VFS has the right to assert against the Debtor any Deficiency Claim, unless VFS makes a
18 valid election under section 1111(b) of the Bankruptcy Code, any Allowed Deficiency
19 Claim of VFS shall be treated as an Allowed Class 5 General Unsecured Claim.

20 **5.2.3 Voting.** Claims in Class 2 are unimpaired by this Plan and holders of
21 Class 2 Claims are conclusively deemed to have accepted the Plan pursuant to
22 section 1126(f) of the Bankruptcy Code. Therefore, holders of Class 2 Claims are not
23 entitled to vote to accept or reject the Plan.

24 **5.3 Class 3 – Any Allowed Secured Claim of Bello Construction.**

25 **5.3.1 Classification.** Class 3 consists of any Allowed Secured Claim of Bello
26 Construction.

27 **5.3.2 Treatment.** The Debtor believes that the Committee will be seeking to
28 avoid the lien and subordinate the claim held by Bello Construction . Assuming there is no

1 judgment or order vacating its Lien and subordinating its claim, Bello Construction shall
2 retain, without alteration or modification hereunder, its Lien encumbering the Debtor
3 Collateral in which Bello Construction has a Lien, and shall be paid from the liquidation of
4 the Debtor Collateral in which Bello Construction has a Lien. In the event that Bello
5 Construction has the right to assert against the Debtor any Deficiency Claim, unless Bello
6 Construction makes a valid election under section 1111(b) of the Bankruptcy Code, any
7 Allowed Deficiency Claim of Bello Construction shall be treated as an Allowed Class 5
8 General Unsecured Claim.

9 **5.3.3 Voting.** Claims in Class 3 are unimpaired by this Plan and holders of
10 Class 3 Claims are conclusively deemed to have accepted the Plan pursuant to
11 section 1126(f) of the Bankruptcy Code. Therefore, holders of Class 3 Claims are not
12 entitled to vote to accept or reject the Plan.

13 **5.4 Class 4 – Any Allowed Priority Non-Tax Claims.**

14 **5.4.1 Classification.** Class 4 consists of any Allowed Priority Non-Tax Claims.

15 **5.4.2 Treatment.** On the later of: (a) the Effective Date; and (b) the fifteenth
16 (15th) Business Day after such Priority Non-Tax Claim becomes an Allowed Priority Non-
17 Tax Claim, or, in either case, as soon thereafter as is practicable, each holder of an
18 Allowed Priority Non-Tax Claim shall receive in full satisfaction, settlement, and release
19 of and in exchange for such Allowed Priority Non-Tax Claim, a pro rata share of the Class
20 4 Liquidation Trust Interests.

21 **5.4.3 Voting.** Claims in Class 4 are impaired by this Plan, and holders of Class 4
22 Claims are entitled to vote to accept or reject the Plan.

23 **5.5 Class 5 – Allowed General Unsecured Claims.**

24 **5.5.1 Classification.** Class 5 consists of all Allowed General Unsecured Claims.

25 **5.5.2 Treatment.** On the later of: (a) the Effective Date; and (b) the fifteenth
26 (15th) Business Day after such General Unsecured Claim becomes an Allowed General
27 Unsecured Claim, or, in either case, as soon thereafter as is practicable, each holder of an
28 Allowed General Unsecured Claim shall receive in full satisfaction, settlement, and release

1 of and in exchange for such Allowed General Unsecured Claim, a pro rata share of the
2 Class 5 Liquidation Trust Interests.

3 **5.5.3 Voting.** Claims in Class 5 are impaired by this Plan, and holders of Class 5
4 Claims are entitled to vote to accept or reject the Plan.

5 **5.6 Class 6 – Subordinated Claims**

6 **5.6.1 Classification.** Class 6 consists of all Subordinated Claims.

7 **5.6.2 Treatment.** Claims in Class 6 shall not receive any property under the Plan
8 and on the Effective Date shall be deemed to be satisfied, settled, and released.

9 **5.6.3 Voting.** Claims in Class 6 are impaired under the Plan. Holders of Class 6
10 Claims are conclusively deemed to have rejected the Plan and are not entitled to vote to
11 accept or reject the Plan.

12 **5.6.4**

13 **5.7 Class 7 – Interests in the Debtor.**

14 **5.7.1 Classification.** Class 7 consists of the Interests in the Debtor.

15 **5.7.2 Treatment.** On the Effective Date, all Interests in the Debtor shall be
16 extinguished and the holders of such Interests shall not receive or retain any property under
17 the Plan on account of such Interests.

18 **5.7.3 Voting.** Interests in Class 7 are impaired under the Plan. Holders of Class 7
19 Interests are conclusively deemed to have rejected the Plan and are not entitled to vote to
20 accept or reject the Plan.

21 **VI.**

22 **PLAN IMPLEMENTATION**

23 **6.1 Overview.** This Plan provides for an orderly liquidation of the Debtor's
24 Unencumbered Assets for the benefit of Creditors, in accordance with the terms and conditions of
25 this Plan and the Liquidation Trust Agreement. This article is intended to address the means by
26 which the Debtor intends to effectuate the orderly liquidation of the Debtor's Unencumbered
27 Assets provided for by this Plan and the Liquidation Trust Agreement and to fund the obligations
28 to Creditors undertaken in this Plan. This article provides information regarding the conditions

1 precedent to Confirmation and the effectiveness of the Plan, the appointment of the Liquidation
2 Trustee and the establishment of the Liquidation Trust from which Distributions to holders of
3 Allowed Claims will be made, the funding for the Liquidation Trust, the appointment of the LT
4 Advisory Board, and other material issues bearing upon the performance of this Plan. On the
5 Effective Date, all of the Liquidation Trust Assets shall be transferred to, and shall vest in the
6 Liquidation Trust, and shall be managed, administered and controlled by the Liquidation Trustee
7 and/or the LT Advisory Board, in accordance with the terms and conditions of this Plan. As of the
8 Effective Date, no assets shall vest or remain vested in the Debtor.

9 **6.2 Conditions Precedent to Plan Confirmation.** The Confirmation Order shall be in
10 form and substance reasonably satisfactory to the Debtor and Committee.

11 **6.3 Conditions Precedent to the Effectiveness of the Plan.** The following are the
12 conditions precedent to the effectiveness of this Plan and the occurrence of the Effective Date:
13 (a) the Confirmation Order shall have become a Final Order; and (b) any documents, instruments
14 and agreements, including the Liquidation Trust Agreement, in form and substance reasonably
15 satisfactory to the Debtor and the Committee, provided for by or appropriate to implement this
16 Plan shall have been executed and delivered by the parties thereto.

17 The Debtor, in the exercise of its sole and absolute discretion, may waive either of the
18 conditions to the effectiveness of this Plan and to the occurrence of the Effective Date set forth
19 hereinabove, without the need for any further approval of the Bankruptcy Court. Without limiting
20 the generality of the foregoing, in the event that an appeal, petition for certiorari or motion for
21 reargument or rehearing or comparable post-confirmation relief is filed with respect to the
22 Confirmation Order, and no stay of the effectiveness of the Confirmation Order is obtained, the
23 Debtor may elect, in the exercise of its sole and absolute discretion, to waive the condition set forth
24 in Section 6.3(a) hereof, and to proceed with the Effective Date of this Plan and to commence to
25 consummate this Plan, by filing and serving notice of such election upon the Committee, the
26 United States Trustee, and the party seeking such post-confirmation relief.

27 The failure of a condition set forth in this Section 6.3 to be satisfied constitutes good and
28 sufficient cause for the Debtor to have this Plan not become effective regardless of the

1 circumstances giving rise to the failure of such condition to be satisfied, unless the failure of a
2 condition set forth in this Section 6.3 is due to an act or omission by the Debtor or Bello.

3 **6.4 Implementation of Plan.** On or soon as practicable after the Effective Date, the
4 following shall occur with respect to the implementation of this Plan: (a) all acts, documents and
5 agreements appropriate to implement this Plan shall be effected, executed and/or delivered; (b) the
6 Liquidation Trust Agreement shall become effective; and (c) the Liquidation Trustee shall make all
7 Distributions required to be made on or about the Effective Date of this Plan.

8 **6.5 Authorization for Transactions.** Upon the Effective Date, all transactions
9 provided for under this Plan shall be deemed to have been authorized and approved by the Debtor
10 without any requirement of further action by the Debtor, and shall be deemed to have been
11 authorized and approved by the Bankruptcy Court without any requirement of further notice or
12 hearing or order of the Bankruptcy Court.

13 **6.6 Provisions Relating to Federal Income Tax Compliance.** Transfers to the
14 Liquidation Trust shall be treated for all purposes of the Internal Revenue Code of 1986, as
15 amended, as transfers to Creditors to the extent Creditors are Beneficiaries. For example, such
16 treatment shall apply for purposes of Internal Revenue Code sections 61(a)(12), 483, 1001, 1012,
17 and 1274. Any such transfer shall be treated for federal income tax purposes as a deemed transfer
18 to the Beneficiary-Creditors followed by a deemed transfer by the Beneficiary-Creditors to the
19 Liquidation Trust. The Beneficiaries shall be treated for federal income tax purposes as the
20 grantors and deemed owners of the Liquidation Trust.

21 **6.7 Liquidation Trustee.** On the Effective Date, Brian Weiss shall resign as Chief
22 Restructuring Officer of the Debtor, and simultaneously become the Liquidation Trustee to
23 effectuate this Plan. The LT Advisory Board shall have the right to replace the Liquidation
24 Trustee, upon any resignation of the Liquidation Trustee or for cause, and in accordance with the
25 terms and conditions of the Liquidation Trust Agreement. A notice identifying any such
26 replacement Liquidation Trustee shall be filed with the Bankruptcy Court and served upon the
27 original Liquidation Trustee, the United States Trustee and any Post-Effective Date Notice Parties.
28 Any objection that any party-in-interest may have to the identity of any such replacement

1 Liquidation Trustee shall be asserted, in writing, by any party-in-interest within seven (7) days
2 after the LT Advisory Board's filing and service of written notice of the proposed appointment of
3 such replacement Liquidation Trustee; if a party-in-interest fails to assert timely any such
4 objection, any such objection shall be deemed to have been waived. In the event that an objection
5 to any such replacement Liquidation Trustee is asserted timely, the merits of such objection shall
6 be determined by the Bankruptcy Court; the objecting party shall have the burden of proof with
7 respect to demonstrating the merits of any such objection.

8 The Liquidation Trustee shall have the right to exercise on behalf of the holders of Allowed
9 Claims, inter alia, the following rights, powers, remedies and duties under this Plan and the
10 Liquidation Trust Agreement (in addition to any and all rights, powers, remedies and duties
11 reasonably necessary or appropriate to carry out the purpose and intent of this Plan which are not
12 inconsistent with the provisions of this Plan or the Liquidation Trust Agreement):

13 **6.7.1 Establishment and Administration of Liquidation Trust Fund.** The
14 Liquidation Trustee shall establish, and shall be responsible for administering, the
15 Liquidation Trust Fund. The Liquidation Trustee may invest Cash in the Liquidation Trust
16 Fund as permitted by the guidelines promulgated by the United States Trustee and in effect
17 on the Effective Date.

18 **6.7.2 Distributions on Account of Allowed Claims.** The Liquidation Trustee
19 shall be responsible for making all Distributions to the holders of Allowed Claims under
20 this Plan in accordance with the provisions of Article VII of this Plan.

21 **6.7.3 Objections to Disputed Claims.** The Liquidation Trustee shall have the
22 right to object to Disputed Claims in accordance with the provisions of Section 8.1 of this
23 Plan.

24 **6.7.4 Prosecution of Causes of Action.** The Liquidation Trustee shall have the
25 right to file and to prosecute Causes of Action in accordance with the provisions of
26 Section 6.14 of this Plan.

27
28

1 **6.7.5 Enforcement of Rights, Claims and Remedies of the Debtor and the**
2 **Estate.** The Liquidation Trustee shall have the right to enforce, on behalf of the holders of
3 Allowed Claims, any and all rights, claims and remedies of the Debtor and the Estate.

4 **6.7.6 Disposition of Liquidation Trust Assets.** From and after the Effective
5 Date, the Liquidation Trustee shall be authorized and directed to take any act and to
6 execute any document appropriate to effectuate the transfer of the Liquidation Trust Assets
7 from the Debtor to the Liquidation Trustee, to be held by the Liquidation Trustee in trust
8 for the benefit of holders of Allowed Claims. The Liquidation Trustee shall have the right
9 to sell, grant, convey, assign, lease, encumber, dispose of and otherwise transfer (as that
10 term is defined in section 101(54) of the Bankruptcy Code) any Liquidation Trust Assets,
11 or any interest therein, in order to promote the interests of holders of Allowed Claims, as
12 the Liquidation Trustee deems advisable in the exercise of its sole and absolute discretion
13 subject only to the approval of the LT Advisory Board with respect to any transaction in
14 excess of \$50,000.00.

15 **6.7.7 Management of Liquidation Trust Assets.** The Liquidation Trustee shall
16 be entitled to manage, administer and to control Liquidation Trust Assets in order to
17 promote the interests of holders of Allowed Claims, as the Liquidation Trustee deems
18 advisable in the exercise of its sole and absolute discretion, subject only to the approval of
19 the LT Advisory Board.

20 **6.7.8 Investigation of Debtor's Assets and Properties/Prosecution of Causes**
21 **of Action Against the Debtor and/or Insiders and Affiliates of the Debtor.** The
22 Liquidation Trustee shall have the right to investigate the Debtor's assets as of the
23 Effective Date, and, if appropriate, to assert any Cause of Action to recover for the benefit
24 of holders of Allowed Claims any asset or property of the Debtor transferred by the Debtor,
25 or not disclosed by the Debtor in the Bankruptcy Schedules or otherwise. The LT
26 Advisory Board shall have the right to investigate the acts and conduct of the Debtor,
27 transactions between the Debtor and an Insider of the Debtor, and transactions between the
28 Debtor and an Affiliate, and, if appropriate, to assert, on behalf of holders of Allowed

1 Claims, any Cause of Action with respect thereto. Notwithstanding anything in this
2 Section 6.7.8 or the Plan to the contrary, the Insider Causes of Action shall be prosecuted in
3 the name of the Liquidation Trustee, but the LT Advisory Board shall have sole and
4 exclusive authority and shall make all decisions with respect to the commencement,
5 prosecution, termination, or settlement of the Insider Causes of Action. The Liquidation
6 Trustee shall have no oversight of, or approval rights with respect to, the prosecution
7 and/or settlement of the Insider Causes of Action, unless such authority is expressly
8 delegated in writing to the Liquidation Trustee by the LT Advisory Board.

9 **6.7.9 Other Rights, Powers and Duties.** In addition to the rights, powers,
10 remedies and duties granted to the Liquidation Trustee pursuant to Sections 6.7.1 through
11 6.7.9 of this Plan, the Liquidation Trustee shall have such other rights, powers and duties
12 that are appropriate to implement and to carry out the provisions of this Plan, for the benefit
13 of holders of Allowed Claims, that are not inconsistent with the provisions of this Plan.

14 **6.8 Liquidation Trust Assets.** On the Effective Date, in accordance with section 1141
15 of the Bankruptcy Code, all of the Liquidation Trust Assets, as well as the rights and powers of the
16 Debtor's Estate applicable to the Liquidation Trust Assets, shall automatically vest in the
17 Liquidation Trust, free and clear of all Claims and Interests for the benefit of the Beneficiaries.
18 The Liquidation Trust shall hold title to the Liquidation Trust Assets and the Liquidation Trust
19 shall be administered solely by the Liquidation Trustee for the benefit of the Beneficiaries.

20 **6.9 Distributions from Liquidation Trust Fund.** Distributions to holders of Allowed
21 Claims shall be solely from the Liquidation Trust Fund, in accordance with the terms and
22 conditions of this Plan.

23 **6.10 Representative of the Estate.** Effective as of the Effective Date, the Liquidation
24 Trustee shall be appointed as the representative of the Estate pursuant to section 1123(b)(3)(B) of
25 the Bankruptcy Code. The Liquidation Trustee shall be vested exclusively with the rights,
26 authorities and powers to carry out and to implement this Plan, including, without limitation, by
27 managing, administering and disposing of the Liquidation Trust Assets for the benefit of holders of
28 Allowed Claims in accordance with the terms and conditions of this Plan. On the Effective Date,

1 the Liquidation Trust Assets shall be transferred to and shall vest in the Liquidation Trustee to be
2 managed, administered, controlled, liquidated, adjusted, settled, enforced, collected or abandoned
3 by the Liquidation Trustee in accordance with the terms and conditions of this Plan.

4 **6.11 No Liability of the LT Advisory Board or the Liquidation Trustee.** To the
5 maximum extent permitted by law, the LT Advisory Board, the Liquidation Trustee, and their
6 respective employees, officers, directors, shareholders, agents, members, representatives, and
7 Professionals (collectively, "**Representatives**") shall not have or incur liability to any Creditor, the
8 Debtor, any party-in-interest or to any other entity for an act taken or omission made in good faith
9 in connection with or related to the administration of the Liquidation Trust Assets under this Plan,
10 the implementation of this Plan and the making of Distributions under this Plan. Entry of the
11 Confirmation Order shall constitute a judicial determination that the exculpation provisions
12 contained in this Section 6.11 are necessary to, *inter alia*, facilitate Confirmation and to minimize
13 potential claims arising after the Effective Date for indemnity, reimbursement or contribution from
14 the Liquidation Trust Assets. The approval of this Plan by the Confirmation Order shall constitute
15 a *res judicata* determination of the matters included in the exculpation provisions of this Plan.
16 Notwithstanding the foregoing, nothing in this Section 6.11 shall absolve the LT Advisory Board
17 or the Liquidation Trustee of any potential liability that either of them may have to any Creditor or
18 to the Debtor on account of any acts or omissions by them constituting willful misconduct or gross
19 negligence.

20 **6.12 Funding of Post-Effective Date Plan Expenses.** All Post-Effective Date Plan
21 Expenses shall be expenses solely of the Liquidation Trust (including, without limitation, any Post-
22 Effective Date Plan Expenses that may be paid from the Liquidation), and not of the Debtor.
23 Except as may be provided expressly to the contrary in the Liquidation Trustee Disclosure, the
24 Liquidation Trustee shall have no personal liability for any Post-Effective Date Plan Expenses.
25 The Liquidation Trustee shall disburse funds from the Liquidation Trust for the purpose of funding
26 the Post-Effective Date Plan Expenses.

27
28

1 **6.13 Termination of the Committee and Appointment of the LT Advisory Board.**

2 **6.13.1 Replacement of the Committee.** As of the Effective Date, the
3 Committee shall terminate and disband, and the Committee shall be released from and
4 discharged of all further authority, duties, responsibilities and obligations related to the
5 Case. As of the Effective Date, the Committee shall be replaced by the LT Advisory
6 Board, which shall be comprised of members of the Committee or other holders of
7 Allowed Class 5 Claims willing to serve on the LT Advisory Board and appointed by the
8 Committee, provided, that there shall be, at any given time, no more than five members of
9 the LT Advisory Board. The LT Advisory Board shall have the right to supervise the
10 Liquidation Trustee and shall have the other powers, rights, responsibilities and functions
11 identified in this Plan and the Liquidation Trust Agreement, and determined by the
12 Committee or LT Advisory Board, as the case may be, that are not inconsistent with the
13 provisions of this Plan.

14 **6.13.2 Members of Any LT Advisory Board.** In the event of the death or
15 resignation of any member of a LT Advisory Board, the remaining members of the LT
16 Advisory Board shall have the right to designate a successor member from among the
17 holders of Allowed General Unsecured Claims. If a LT Advisory Board member assigns
18 its Claim in full, or releases the Debtor from payment of the balance of such member's
19 Claim, such act shall constitute a resignation from the LT Advisory Board. Until a
20 vacancy on the LT Advisory Board is filled, the LT Advisory Board shall function in its
21 reduced number. If at any time, there are no serving members of the LT Advisory Board,
22 the Committee shall be reconstituted solely for the purpose of designating a successor
23 member of the LT Advisory Board. Upon the Case Closing Date, any LT Advisory Board
24 shall be dissolved and the members thereof shall be released and discharged of and from all
25 further authority, duties, responsibilities and obligations related to and arising from their
26 service as LT Advisory Board members.

27 **6.13.3 Duties of Members of Any LT Advisory Board.** The members of any
28 LT Advisory Board shall undertake their duties as specified in this Plan and such other

1 duties as determined by the LT Advisory Board that are not inconsistent with the
2 provisions of this Plan and the Liquidation Trust Agreement. In serving as a member of
3 any LT Advisory Board, such member shall not assume, or be deemed to have assumed,
4 any liability to Creditors, the Debtor, or any other parties-in-interest in the Case and shall
5 not be liable for any acts or omissions while acting in that capacity.

6 **6.14 Causes of Action.**

7 **6.14.1 Liquidation Trustee's Right to Prosecute Causes of Action.** Subject to
8 the provisions of Section 6.14.3 hereof, the right to file, litigate, prosecute, settle, adjust,
9 enforce, collect or abandon on behalf of the Debtor and the Estate any and all Causes of
10 Action, except the Insider Causes of Action, is deemed automatically transferred on the
11 Effective Date from the Debtor to the Liquidation Trustee, and, from and after the Effective
12 Date. Accordingly, the Liquidation Trustee shall have the sole and exclusive right to file,
13 litigate, prosecute, settle, adjust, enforce, collect or abandon all Causes of Action other than
14 the Insider Causes of Action.

15 **6.14.2 LT Advisory Board's Right to Prosecute Insider Causes of Action.**

16 The right to file, litigate, prosecute, settle, adjust, enforce, collect or abandon on behalf of
17 the Debtor and the Estate the Insider Causes of Action is deemed automatically transferred
18 on the Effective Date from the Debtor to the Liquidation Trust from and after the Effective
19 Date, provided, however, that only the LT Advisory Board, and not the Liquidation
20 Trustee, shall have the sole and exclusive right to approve the filing, litigation, prosecution,
21 settlement, adjustment, enforcement, collection or abandonment of the Insider Causes of
22 Action.

23 **6.14.3 LT Advisory Board's Right to Make Demand for Prosecution of**
24 **Cause of Action.** Notwithstanding the rights of the Liquidation Trustee with respect to
25 Causes of Action, nothing in this Plan shall require the Liquidation Trustee to file or to
26 prosecute any Cause of Action, both of which may be determined by the Liquidation
27 Trustee in the exercise of his sole and absolute discretion; provided, however, that, in the
28 event that the Liquidation Trustee fails to file an action or proceeding with respect to a

1 Cause of Action within ninety (90) days after the Effective Date, the LT Advisory Board
2 shall be entitled thereafter to serve upon the Liquidation Trustee written demand that the
3 Liquidation Trustee file an action or proceeding with respect to such Cause of Action. In
4 the event that the Liquidation Trustee fails to file an action or proceeding with respect to
5 such Cause of Action within the earlier of (a) thirty (30) days after service of such written
6 demand and (b) five (5) days before the expiration of an statute of limitations or similar
7 deadline, and unless otherwise ordered by the Bankruptcy Court within such period, the
8 right to file, litigate, prosecute, settle, adjust, enforce, collect or abandon such Cause of
9 Action shall be deemed to be transferred irrevocably and unconditionally to the LT
10 Advisory Board, with any Net Recoveries therefrom paid to the Liquidation Trust.

11 **THE DEBTOR AND COMMITTEE HAVE NOT COMPLETED THEIR**
12 **INVESTIGATION REGARDING THE EXISTENCE AND SCOPE OF CAUSES OF**
13 **ACTION. THE INVESTIGATION IN THIS REGARD IS ONGOING. AS A RESULT,**
14 **ALL PARTIES-IN-INTEREST ARE HEREBY ADVISED THAT, NOTWITHSTANDING**
15 **THE FACT THAT THE EXISTENCE OF ANY PARTICULAR CAUSE OF ACTION MAY**
16 **NOT BE LISTED, DISCLOSED OR SET FORTH IN THIS PLAN, A CAUSE OF ACTION**
17 **MAY BE FILED AGAINST ANY CREDITOR OR OTHER PARTY AS THE**
18 **LIQUIDATION TRUSTEE MAY DETERMINE, IN THE EXERCISE OF THEIR SOLE**
19 **AND ABSOLUTE DISCRETION.**

20 **6.15 Post-Effective Date Professional Fees.**

21 **6.15.1 Liquidation Trustee's Employment of Professionals.** Subject to the
22 approval of the LT Advisory Board, the Liquidation Trustee may employ, without any need
23 to give notice to any other party or to obtain any approval of the Bankruptcy Court,
24 Professionals to assist the Liquidation Trustee to perform its duties under this Plan, as the
25 Liquidation Trustee deems appropriate in the exercise of his discretion, and any fees and
26 costs incurred by such Professionals shall be Post-Effective Date Plan Expenses borne
27 solely by the Liquidation Trust, and not by the Liquidation Trustee.
28

1 **6.15.2 Ordinary Course Payments to Professionals.** Any Professional
2 employed by the Liquidation Trustee or the LT Advisory Board after the Effective Date
3 shall be entitled to obtain payment of the Professional’s fees and costs, in the ordinary
4 course and without the approval of the Bankruptcy Court, provided that the LT Advisory
5 Board shall have ten (10) days to review any invoice submitted to the Liquidation Trustee
6 by any Professional retained by the Liquidation Trustee. Notwithstanding the foregoing, if
7 the Professional does not obtain payment of its post-Effective Date fees and costs within
8 thirty (30) days after the Professional’s rendering of its billing statement therefor, the
9 Professional shall be entitled to seek, by application filed in accordance with the
10 Bankruptcy Rules, an order of the Bankruptcy Court requiring prompt payment to the
11 Professional of its fees and costs.

12 **6.16 Approval for Disposition of Assets.** The Liquidation Trustee shall be entitled to
13 sell, grant, convey, assign, lease, encumber, dispose of, or otherwise transfer any Liquidation Trust
14 Assets upon ten (10) day’s notice to the LT Advisory Board and without any need to give any
15 notice to any other party or to obtain any approval of the Bankruptcy Court.

16 **6.17 Compromise of Claims Objections and Causes of Action.** The Liquidation
17 Trustee and LT Advisory Board, as the case may be, shall be entitled to compromise any objection
18 to a Disputed Claim or to compromise any controversies relating to any Cause of Action that such
19 entity is prosecuting pursuant to the Plan, without any need to give any notice to any Creditors or
20 other parties-in-interest, or to obtain any approval of the Bankruptcy Court, provided, however,
21 that the Liquidation Trustee shall be required to obtain the LT Advisory Board’s approval of any
22 such compromise of claims in excess of \$50,000.00.

23 **6.18 Bankruptcy Court Approval Relative to Post-Confirmation Matters.** Nothing
24 contained in this Plan shall be deemed to impair in any manner any right that the Liquidation
25 Trustee or any LT Advisory Board may have to seek after the Effective Date orders of the
26 Bankruptcy Court approving actions to be taken consistent with this Plan as may be necessary or
27 desirable to effectuate the provisions of this Plan, including, without limitation, any sale of
28

1 Liquidation Trust Assets free and clear of interests pursuant to section 363(f) of the Bankruptcy
2 Code.

3 **6.19 Plan Completion Certification.** On or as soon as practicable after the date upon
4 which the Liquidation Trustee determines, after consultation with the LT Advisory Board, that all
5 Distributions required to be made under this Plan to holders of Allowed Claims have been made or
6 that final Distributions to holders of Allowed Claims are being made or promptly will be made, the
7 Liquidation Trustee shall file with the Bankruptcy Court and serve upon the United States Trustee,
8 the LT Advisory Board, and any Creditor that files after the Effective Date a request for notice of
9 any proceedings in the Case (such parties, together with the Liquidation Trustee, are referred to
10 herein, collectively, as the “**Post-Effective Date Notice Parties**”) a certification attesting to such
11 determination (“**Plan Completion Certification**”).

12 **6.20 Final Decree.** Unless earlier filed by the Liquidation Trustee, by the thirtieth
13 (30th) Business Day after the filing of the Plan Completion Certification, the Liquidation Trustee
14 shall file, in accordance with Rule 3022 of the Federal Bankruptcy Rules, an application with the
15 Bankruptcy Court to obtain a final decree to close the Case (“**Final Decree**”). The Liquidation
16 Trustee may file an application to obtain a Final Decree as and when he deems appropriate in the
17 Case, but shall not file any such application before the Distributions required to be made hereunder
18 at or about the Effective Date are finally and indefeasibly paid.

19 **6.21 Books and Records.** On the Effective Date, the Debtor shall transfer to the
20 Liquidation Trustee all financial, accounting and tax books and records of the Debtor and all
21 documents and data relating to the foregoing.

22 **6.22 Obligation to Cooperate with Liquidation Trustee.** The Debtor and each
23 Affiliate shall have a duty and obligation, enforceable pursuant to this Plan, to take any act and to
24 execute any document appropriate to facilitate the efficient, effective and economical
25 implementation and consummation of this Plan, and to reasonably cooperate with the Liquidation
26 Trustee with respect to the exercise by the Liquidation Trustee of the Liquidation Trustee’s rights,
27 duties and responsibilities pursuant to this Plan. Without limiting the generality of the foregoing,
28 the following acts shall be taken by the Debtor and/or by each Affiliate.

1 **6.22.1 Transfer of Liquidation Trust Assets.** The Debtor shall take any act and
2 execute any document appropriate for the Debtor to transfer to the Liquidation Trustee the
3 Liquidation Trust Assets on or as soon as practicable after the Effective Date, so as to
4 ensure to the greatest extent possible that the Liquidation Trustee shall have, from and after
5 the Effective Date, full and complete use of, and title to, the Liquidation Trust Assets,
6 without limitation or restraints, on the alienability thereof.

7 **6.22.2 Cooperation Regarding Management of Liquidation Trust Assets.**
8 The Debtor and each Affiliate shall provide to the Liquidation Trustee reasonable
9 cooperation to facilitate the Liquidation Trustee's management, administration and control
10 of Liquidation Trust Assets in accordance with the provisions of Section 6.7.7 of this Plan.

11 **6.22.3 Cooperation Regarding Disposition of Liquidation Trust Assets.** The
12 Debtor and each Affiliate shall provide to the Liquidation Trustee reasonable cooperation
13 to facilitate the Liquidation Trustee's sale, grant, conveyance, assignment, lease,
14 encumbrance, disposition of, and transfer of Liquidation Trust Assets in accordance with
15 the provisions of Section 6.7.7 of this Plan.

16 **6.22.4 Payment of Affiliate Distributions.** Each Affiliate shall pay to the
17 Liquidation Trustee any Affiliate Distributions that such Affiliate is required to pay to the
18 Liquidation Trustee pursuant to this Plan.

19 **6.22.5 Cooperation Regarding Assertion of Causes of Action.** Upon
20 reasonable written request made by the Liquidation Trustee to the Debtor, the Debtor shall
21 provide to the Liquidation Trustee reasonable cooperation in order to facilitate the
22 Liquidation Trustee's efficient, effective and economical prosecution of any Cause of
23 Action. The Committee shall enter into an agreement with the Liquidation Trustee for the
24 transfer of certain documents, information, and privileges from the Committee to the
25 Liquidation Trust, the form of which will be included in the Plan Supplement.

26 **6.22.6 No Inconsistent Acts.** The Debtor shall not take any act inconsistent with
27 the terms of this Plan or which may impair or which may interfere with the consummation
28 of the terms of this Plan.

1 **6.23 Resolution of Disputes.** In the event that a dispute should arise between the
2 Liquidation Trustee, on one hand, and the Debtor or an Affiliate, on the other hand, regarding any
3 of their respective rights, obligations and remedies pursuant to this Plan, they shall act diligently
4 and in good faith to try to resolve such dispute, but, if such dispute cannot be resolved by them,
5 any of them shall be entitled to request, pursuant to the provisions of the Bankruptcy Rules, that
6 the Bankruptcy Court resolve the merits of such dispute.

7 **6.24 Disposition of Guarantees.** In accordance with the provisions of section 101(5) of
8 the Bankruptcy Code, any Claim arising out of or related to any pre-petition guarantee provided by
9 the Debtor shall be deemed to be solely a General Unsecured Claim, and no Administrative Claim
10 or post-Effective Date claim or other obligation or liability for the Estate or the Liquidation Trust
11 shall arise with respect thereto. In the event that an agreement cannot be reached regarding the
12 allowed amount of such Claim, the Liquidation Trustee shall have the right to have the Bankruptcy
13 Court estimate the amount of such Claim for the purpose of allowance in accordance with the
14 provisions of section 502(c) of the Bankruptcy Code.

15 **6.25 No Waiver of Reimbursement or Contribution Claims.** There shall be no
16 waiver of, and the LT Advisory Board shall have the right to cause the Liquidation Trust to assert a
17 Cause of Action arising from or relating to, any and all claims of any nature whatsoever that the
18 Estate has or may have against any Affiliate on account of or relating to the payment of any
19 Allowed Claims that relate to or arose in connection with any guarantee by the Debtor of the
20 payment of obligations owed by an Affiliate to its creditors, or in connection with an agreement by
21 the Debtor to indemnify creditors of an Affiliate with respect to any failure by the Affiliate to
22 comply with its obligations to such creditors, including, without limitation, any and all claims for
23 reimbursement or contribution, and any and all claims based upon comparable or related causes of
24 action or legal theories.

25 ///

26

27

28

VII.

DISTRIBUTIONS

7.1 Distributions Generally.

7.1.1 Distributions. The Liquidation Trustee shall be responsible for making all Distributions to the holders of Allowed Claims under this Plan. The Liquidation Trustee shall not be required to be bonded in connection with the performance of the Liquidation Trustee's duties pursuant to this Plan.

7.1.2 Liquidation Trustee's Employment of Agents. The Liquidation Trustee shall be authorized to implement such procedures as it deems necessary in order to ensure that Distributions are made promptly, accurately and efficiently under this Plan, including, without limitation, by employing one or more agents on such terms and conditions as it deems appropriate.

7.2 Distribution of Property Under this Plan.

7.2.1 Cash Distributions. All Distributions under this Plan shall be in Cash. Cash Distributions made pursuant to this Plan shall be in United States funds, by checks drawn on a domestic bank or, if the Liquidation Trustee so elects, in the exercise of his sole and absolute discretion, by wire transfers from a domestic bank.

7.2.2 Setoffs and Recoupment. Pursuant to section 553 of the Bankruptcy Code or applicable non-bankruptcy law, the Liquidation Trustee may set off, recoup or withhold against any Allowed Claim and Distribution to be made pursuant to this Plan on account of such Allowed Claim any pre-Petition Date or post-Petition Date account stated, claim, right, or cause of action that the Debtor or the Estate may possess against the holder of such Allowed Claim. Neither the failure to effect such a setoff or recoupment nor the allowance of any Claim shall constitute a waiver or release by the Debtor, the Estate, or the Liquidation Trustee of any such account, claim, right, or cause of action against the holder of such Allowed Claim.

7.2.3 No De Minimis Distributions. Notwithstanding anything to the contrary in this Plan, no Distribution of less than \$25 ("**De Minimis Distribution**") shall be made

1 to any holder of an Allowed Claim on account thereof. No consideration shall be provided
2 in lieu of any De Minimis Distributions that are not made under this Plan.

3 **7.2.4 Timeliness of Distributions.** Any Distribution required to be made
4 hereunder shall be deemed timely if made within ten (10) days after the due date therefor.
5 Any Distribution required to be made upon a Disputed Claim becoming an Allowed Claim
6 and no longer being a Disputed Claim shall be deemed timely if made as soon as
7 practicable thereafter but, in any event, within thirty (30) Business Days thereafter.

8 **7.2.5 Limitation on Liability.** Neither the Committee, the LT Advisory Board,
9 the Liquidation Trustee, nor any of their respective Representatives shall be liable for
10 (a) any acts or omissions (except for acts or omissions constituting gross negligence or
11 willful misconduct) in connection with implementing the Distribution provisions of this
12 Plan and the making or withholding of Distributions pursuant to this Plan, or (b) any
13 change in the value of Distributions made pursuant to this Plan resulting from any delays in
14 making such Distributions in accordance with the terms of this Plan (including, but not
15 limited to, any delays caused by the resolution of Disputed Claims). Notwithstanding the
16 foregoing, nothing in this Section 7.2.5 shall impair any rights or remedies that a Creditor
17 may have arising from or related to any failure to pay timely to such Creditor the
18 Distributions required to be paid to it pursuant to this Plan.

19 **7.2.6 Delivery of Distributions.**

20 **7.2.6.1 Distributions Only to Holders of an Allowed Claim.** Each
21 Distribution under this Plan shall be tendered only to the holder of the Allowed
22 Claim entitled to such Distribution, in the manner set forth in Section 7.2.6.2 of this
23 Plan.

24 **7.2.6.2 Addresses to Which Distributions Will Be Sent.** Except as
25 provided in Section 7.2.8 with respect to Unclaimed Property, Distributions to
26 holders of Allowed Claims and Allowed Administrative Claims shall be distributed
27 by mail as follows: (a) with respect to each holder of an Allowed Claim that has
28 filed a Proof of Claim, at the address for such Creditor reflected in such Proof of

1 Claim; (b) with respect to each holder of an Allowed Claim that has not filed a
2 Proof of Claim, at the address reflected in the Bankruptcy Schedules; provided,
3 however, that, if the Liquidation Trustee receives a written notice of a change of
4 address for such Creditor, the address set forth in such notice shall be used; or
5 (c) with respect to each holder of an Allowed Administrative Claim, at such
6 address as the holder thereof may specify in writing.

7 **7.2.7 Undeliverable Distributions.** If the Distribution to a holder of any
8 Allowed Claim or Allowed Administrative Claim is returned as undeliverable (any such
9 Distribution being hereinafter referred to as “**Unclaimed Property**”), no further
10 Distribution shall be made to such Creditor unless and until the Liquidation Trustee is
11 notified in writing of such Creditor’s then current address. Subject to the provisions of
12 Section 7.2.8 hereof, Unclaimed Property shall remain in the control of the Liquidation
13 Trustee and shall be set aside and held in a segregated account (“**Unclaimed Property**
14 **Reserve**”) to be maintained until such time as the subject Distribution becomes deliverable
15 or is disposed of in accordance with the provisions of Section 7.2.8 hereof. Nothing
16 contained in this Plan shall require the Liquidation Trustee or any other entity to attempt to
17 locate such Creditor. No interest shall be payable with respect to any Unclaimed Property.

18 **7.2.8 Disposition of Unclaimed Property.** If a Creditor entitled to a
19 Distribution of Unclaimed Property gives written notice to the Liquidation Trustee of such
20 Creditor’s claim to the Distribution of such Unclaimed Property within three (3) months
21 following the date upon which such Distribution initially was sent to such Creditor
22 (“**Initial Distribution Date**”), the Unclaimed Property distributable to such Creditor shall
23 be released from the Unclaimed Property Reserve and paid to such Creditor within
24 thirty (30) Business Days thereof. Any holder of an Allowed Claim or Allowed
25 Administrative Claim that does not assert a claim in writing for Unclaimed Property held
26 by the Liquidation Trustee within three (3) months following the Initial Distribution Date
27 with respect to such Unclaimed Property shall no longer have any claim to or interest in
28 such Unclaimed Property, and shall be forever barred from receiving a Distribution on

1 account thereof. In such cases, any such Unclaimed Property shall be released to the
2 Liquidation Trustee for further disposition in accordance with the terms and conditions of
3 this Plan.

4 **7.2.9 Compliance with Tax Requirements.** The Liquidation Trustee shall
5 comply with all tax withholding and reporting requirements imposed upon it by any
6 governmental unit, and all Distributions pursuant to this Plan shall be subject to such tax
7 withholding and reporting requirements.

8 **7.2.10 Further Assurances Regarding Distributions.** In accordance with the
9 provisions of Section 13.21 hereof, as a condition to obtaining Distributions under this
10 Plan, each Creditor shall execute and deliver to the Liquidation Trustee, or join in the
11 execution and delivery of, any agreement or instrument appropriate for the consummation
12 of this Plan.

13 **7.2.11 Creditor's Payment of Obligations or Turn Over of Property to the**
14 **Liquidation Trustee.** As a condition to obtaining Distributions under this Plan, any
15 Creditor from which property is recoverable under sections 542, 543, 550 or 553 of the
16 Bankruptcy Code, or otherwise, or that is a transferee of a transfer avoidable pursuant to a
17 Final Order of the Bankruptcy Court under sections 522, 544, 545, 547, 548 or 549 of the
18 Bankruptcy Code or otherwise, shall pay to the Liquidation Trustee the amount, or turn
19 over to the Liquidation Trustee any such property, for which such Creditor is liable to the
20 Debtor. The disposition and application of such payment shall be determined in
21 accordance with the terms and conditions of this Plan.

22 VIII.

23 **OBJECTIONS TO DISPUTED CLAIMS**

24 **8.1 Objections to Claims.**

25 **8.1.1 Liquidation Trustee's Right to Object to Disputed Claims.** Subject to
26 the provisions of Section 8.1.2 hereof, the Liquidation Trustee shall have the exclusive
27 right to file, litigate, settle, adjust, enforce or abandon objections to any and all Disputed
28

1 Claims, including any objection seeking to subordinate a Disputed Claim pursuant to
2 Section 510 of the Bankruptcy Code.

3 **8.1.2 LT Advisory Board's Right to Make Demand for Filing Objection to**
4 **Disputed Claims.** Notwithstanding the rights of the Liquidation Trustee with respect to
5 objecting to Disputed Claims as set forth above in Section 8.1.1 of this Plan, nothing in this
6 Plan shall require the Liquidation Trustee to file or to prosecute an objection to any
7 Disputed Claim, both of which may be determined by the Liquidation Trustee in the
8 exercise of his sole and absolute discretion; provided, however, in the event that the
9 Liquidation Trustee fails to file an objection with respect to a Disputed Claim within one
10 hundred twenty (120) days after the Effective Date, the LT Advisory Board shall be
11 entitled thereafter to serve upon the Liquidation Trustee written demand that the
12 Liquidation Trustee file an objection with respect to such Disputed Claim. In the event that
13 the Liquidation Trustee fails to file an objection with respect to such Disputed Claim within
14 thirty (30) days after service of such written demand, unless otherwise ordered by the
15 Bankruptcy Court for good cause shown, the rights to prosecute, control, withdraw and
16 resolve such Disputed Claim shall be deemed to be transferred irrevocably and
17 unconditionally to the LT Advisory Board and the LT Advisory Board, then shall be
18 entitled exclusively to file, litigate, prosecute, settle, adjust, enforce, collect or abandon
19 such objection to the Disputed Claim, with any Net Recoveries that may be obtained in
20 connection with such objection to the Disputed Claim paid to the Liquidation Trust and
21 applied in accordance with the terms and conditions of this Plan.

22 **THE COMMITTEE AND DEBTOR HAVE NOT COMPLETED THEIR**
23 **INVESTIGATION REGARDING THE EXISTENCE OF DISPUTED CLAIMS. THE**
24 **INVESTIGATION IN THIS REGARD IS ONGOING. AS A RESULT, ALL PARTIES-IN-**
25 **INTEREST ARE HEREBY ADVISED THAT, NOTWITHSTANDING THE FACT THAT**
26 **THE EXISTENCE OF ANY PARTICULAR DISPUTED CLAIM MAY NOT BE LISTED,**
27 **DISCLOSED OR SET FORTH IN THIS PLAN, SUBJECT ONLY TO THE CLAIMS**
28 **OBJECTION DEADLINE, AN OBJECTION MAY BE FILED TO ANY DISPUTED**

1 **CLAIM AS THE LIQUIDATION TRUSTEE MAY DETERMINE, IN THE EXERCISE OF**
2 **HIS SOLE AND ABSOLUTE DISCRETION. THE LIQUIDATION TRUSTEE SHALL**
3 **HAVE THE RIGHT TO OBJECT TO AMOUNTS THAT HAVE BEEN SCHEDULED BY**
4 **THE DEBTOR AND THAT ARE FOUND TO BE OBJECTIONABLE IN ANY RESPECT.**

5 **8.2 Claims Objection Deadline.** Unless another date is established by order of the
6 Bankruptcy Court, an objection to a Claim must be filed with the Bankruptcy Court and served on
7 the Creditor holding such Claim on or before the Claims Objection Deadline. The Bankruptcy
8 Court may extend the Claims Objection Deadline for cause shown.

9 **8.3 Treatment of Disputed Claims.**

10 **8.3.1 No Distribution Pending Allowance.** All Distributions under this Plan
11 shall be made only on account of Allowed Claims. If any portion of a Claim is a Disputed
12 Claim, no Distribution provided for under this Plan shall be made on account of such
13 Claim unless and until such Claim becomes an Allowed Claim and is no longer a Disputed
14 Claim.

15 **8.3.2 Distribution After Allowance.** Within thirty (30) Business Days following
16 the date on which a Disputed Claim becomes an Allowed Claim and is no longer a
17 Disputed Claim, the Liquidation Trustee shall distribute to the Creditor holding such
18 Allowed Claim any Cash that would have been distributable to such Creditor as if, at the
19 time of the making of any Distribution to the Class of which such Creditor is a member,
20 such Claim had been an Allowed Claim and not a Disputed Claim. Post-Petition Interest
21 shall only be paid on Disputed Claims that become Allowed Priority Wage Claims,
22 Allowed Priority Non-Tax Claims or Allowed General Unsecured Claims.

23 **8.3.3 Reserve for Disputed Claims.** On or as soon as practicable after the
24 Effective Date, the Liquidation Trustee shall establish, in a segregated, interest-bearing
25 account, a reserve for any Disputed Claim ("**Disputed Claims Reserve**") in an amount
26 equal to 100% of the Distribution to which the holder of the Disputed Claim would be
27 entitled under this Plan based upon the liquidated, face amount of its non-duplicative
28 Disputed Claim unless such Claim is estimated by Final Order of the Bankruptcy Court;

1 provided, however, that the Liquidation Trustee shall have the right to seek from the
2 Bankruptcy Court an order reducing the amount of such Reserve pending the resolution of
3 the Disputed Claim. If the Disputed Claim does not set forth a liquidated amount of such
4 Claim, then the amount of the Reserve to be established on account of such Disputed
5 Claim shall be the amount fixed mutually by the Creditor and by the Liquidation Trustee or
6 the amount estimated by the Bankruptcy Court for the purpose of this Section 8.3.3. If the
7 Disputed Claim is estimated, the amount of the Reserve to be established on account of
8 such Disputed Claim shall be the amount of the Distribution payable with respect to the
9 estimated amount of such Disputed Claim as determined by Final Order of the Bankruptcy
10 Court or agreed to in writing by the Creditor, and such estimated amount shall set forth the
11 maximum amount of the Distribution on account of such Disputed Claim. In the case of
12 any disputed Avoidance Action Payment Claim, the amount of the Reserve established on
13 account of such Disputed Claim shall be equal to the amount of the Distribution payable on
14 account of the payment that the holder of such Disputed Claim has paid to the Debtor or
15 shall pay to the Liquidation Trustee with respect to the Avoidance Action asserted against
16 the holder of such Disputed Claim.

17 **8.3.4 No Distribution Until Allowance of Disputed Claim.** No disbursement of
18 funds from a Disputed Claims Reserve shall be made on account of a Disputed Claim
19 unless and until such Disputed Claim becomes an Allowed Claim. Any amount of a Claim
20 which has been disallowed pursuant to an order of the Bankruptcy Court shall be deemed
21 to be extinguished and no Distribution of any amount shall be paid on account thereof.
22 The amount reserved for any Disputed Claim (plus any interest thereon) which has been
23 disallowed by the Bankruptcy Court shall be released to the Liquidation Trustee for the
24 purpose of further disposition in accordance with the provisions of this Plan.

25 **8.4 Bar Date for Filing Avoidance Action Payment Claims.** Any Avoidance Action
26 Payment Claim shall be forever barred, shall not be enforceable against the Debtor, the Estate, the
27 Liquidation Trustee or the Liquidation Trust and shall not be entitled to any Distribution under this
28 Plan, unless a Proof of Claim for such Avoidance Action Payment Claim is filed and served on the

1 Liquidation Trustee within thirty (30) days after the later of (a) the date of entry of the order of the
2 Bankruptcy Court adjudging the Creditor's liability to the Debtor or to the Liquidation Trust on
3 account of such Avoidance Action, or (b) the Effective Date.

4 **IX.**

5 **LITIGATION**

6 **9.1 Authorization to Assert Causes of Action.** From and after the Effective Date, the
7 Liquidation Trust shall have the exclusive right to file, litigate, prosecute, settle, adjust, enforce,
8 collect and abandon the Insider Causes of Action and all other Causes of Action, respectively,
9 without the consent or approval of any third party, and without any further order of the Bankruptcy
10 Court, in accordance with the provisions of Sections 6.14 and 6.18 hereof.

11 **9.2 Evaluation of Causes of Action.** The decision of the LT Advisory Board and/or
12 the Liquidation Trustee as the case may be to prosecute or to continue to prosecute the Insider
13 Causes of Action and all other Causes of Action, respectively, shall be based, in part, upon their
14 respective evaluation of the merits of the Insider Causes of Action and other Causes of Action,
15 respectively, as well as the costs required to prosecute such causes of action taking into account the
16 resources available to make Distributions to Creditors. Subject to the provisions of Section 6.14.2
17 hereof, the LT Advisory Board and the Liquidation Trustee shall be entitled to determine, in the
18 exercise of their respective sole and absolute discretion, not to prosecute, or to abandon, any
19 Insider Causes of Action or other Causes of Action, respectively, which they are each entitled to
20 prosecute pursuant to Section 6.14 hereof.

21 **9.3 Retention of Professionals.** The LT Advisory Board and the Liquidation Trustee
22 may retain Professionals to represent them in prosecuting the Insider Causes of Action and other
23 Causes of Action, respectively, pursuant to Section 6.15 hereof. The LT Advisory Board and the
24 Liquidation Trustee shall be entitled to determine, in the exercise of each of their respective
25 business judgment, the terms of the retention of Professionals, including, without limitation, the
26 retention of counsel on a contingency fee basis to prosecute some or all of the Causes of Action,
27 and may seek to finance any costs relating to the prosecution of Causes of Action.

28

1 such amendments within which to serve on the Debtor a written objection to the same. Upon
2 receipt of any such objection, the Debtor shall promptly set a hearing on the same, and the
3 rejection of the affected contract or unexpired lease shall be delayed until the Bankruptcy Court
4 makes a determination on such issue (such determination may be made after the Confirmation
5 Date, without delaying the confirmation of this Plan). To the extent that an executory contract or
6 unexpired lease has been rejected by the Debtor prior to the Confirmation Date pursuant to an
7 order of the Bankruptcy Court, such rejection shall not be affected by this Plan. The rejection of
8 any contract or lease pursuant to the provisions of this Section 10.1 shall be only to the extent that
9 such rejected contract or lease constitutes an executory contract or unexpired lease within the
10 meaning of section 365 of the Bankruptcy Code. Inclusion of an agreement in Exhibit 10.1 does
11 not constitute an admission by the Debtor that (a) such agreement is an executory contract or
12 unexpired lease within the meaning of section 365 of the Bankruptcy Code, or (b) such agreement
13 is a valid contract or lease. Any contract or lease rejected pursuant to this Plan shall be rejected as
14 previously amended or otherwise modified by the parties thereto, whether before or after the
15 Petition Date. Any executory contract or unexpired lease not listed in Exhibit 10.1 shall be
16 deemed to be rejected on the Effective Date.

17 **10.2 Retention of Property Rights.** To the extent that the Estate has obtained property
18 rights under the executed portion of an executory contract or unexpired lease, rejection of such
19 agreement shall not constitute any abandonment of any such property rights.

20 **10.3 Bar Date for Rejection Claims.** Any Rejection Claim shall be forever barred,
21 shall not be enforceable against the Debtor, the Estate, the Liquidation Trustee or the Liquidation
22 Trust, and shall not be entitled to any Distribution under this Plan, unless a Proof of Claim for such
23 Rejection Claim is filed and served on the Debtor and Liquidation Trustee within thirty (30) days
24 after the later of (a) the date of entry of the order of the Bankruptcy Court approving the rejection
25 of the executory contract or unexpired lease, or (b) the Effective Date.

26 ///

27

28

XI.

EFFECT OF CONFIRMATION OF THIS PLAN

11.1 Discharge. Confirmation of the Plan will not discharge Creditors' Claims. *See* 11 U.S.C. § 1141(d)(3).

11.2 Injunction. Except as provided expressly to the contrary in this Plan or in the Confirmation Order, on and after the Effective Date, all Creditors (including, but not limited to, states and other governmental units, and any state official, employee, or other entity acting in an individual or official capacity on behalf of any state or other governmental unit) shall be permanently enjoined from the following: (a) taking any of the following actions on account of any such Claim: (i) commencing or continuing in any manner any action or other proceeding against the Liquidation Trustee, its Representatives, the Liquidation Trust or the Liquidation Trust Assets; (ii) enforcing, attaching, executing, collecting, or recovering in any manner any judgment, award, decree, or order against the Liquidation Trustee, its Representatives, the Liquidation Trust or the Liquidation Trust Assets; (iii) creating, perfecting, or enforcing any Lien against the Liquidation Trustee, its Representatives, the Liquidation Trust or the Liquidation Trust Assets; (iv) asserting any set off, right of subrogation, or recoupment of any kind against any obligation due to the Debtor, the Estate or the Liquidation Trustee; and (v) commencing or continuing any action, in any manner, in any place that does not comply with or is inconsistent with the provisions of this Plan; and (b) taking any acts on account of the Insider Causes of Action and all other Causes of Action that are vested in, or transferred to, the LT Advisory Board or the Liquidation Trustee, respectively, as of the Effective Date, including, without limitation, commencing or continuing in any manner any Avoidance Action (*i.e.*, no party may pursue any Causes of Action except as provided by this Plan). Any person or entity injured by any willful violation of such injunction shall recover its actual damages, including costs and attorneys' fees, and, in appropriate circumstances, may recover punitive damages from the willful violator of such injunction.

11.3 Release. Except as otherwise provided in this Plan or in the Confirmation Order, all Creditors shall be precluded from asserting any Claims against the Liquidation Trustee, the Committee, the LT Advisory Board, each of their respective Representatives, the Liquidation

1 Trust, and the Liquidation Trust Assets. Notwithstanding anything herein to the contrary, no
2 Causes of Action that is the property of the Debtor and/or the Estate shall in any way be released,
3 modified, altered or compromised by virtue of the confirmation of this Plan and the Insider Causes
4 of Action and all other Causes of Action shall automatically be transferred, as of the Effective
5 Date, to the LT Advisory Board and the Liquidation Trustee, respectively, in accordance with the
6 provisions of Section 6.14 of this Plan.

7 **11.4 Distribution of Property Free and Clear of Liens, Claims, and Interests.**

8 Except as otherwise provided in this Plan or in the Confirmation Order, all property distributed
9 under this Plan shall be distributed free and clear of all Liens and other Claims of Creditors and the
10 Interest of the Debtor.

11 **11.5 Binding Effect of Plan.** Upon the Effective Date, the provisions of this Plan shall
12 be binding upon the Debtor, the Liquidation Trustee, and each Creditor.

13 **11.6 Transfer of Assets.** Except only for the Abandoned Assets, which shall be vested
14 in the Debtor, on the Effective Date, all assets, properties and interests of the Estate shall vest in,
15 and shall be property of, the Liquidation Trustee, to be held in trust by the Liquidation Trustee for
16 the benefit of holders of Allowed Claims in accordance with the provisions of this Plan.

17 **11.7 Reservation of Rights.** Nothing contained herein shall impair or affect in any
18 manner any, claims, actions or proceedings which have been or which may be asserted or filed to
19 bar the dischargeability of the Debtor's debt to a Creditor pursuant to section 523 of the
20 Bankruptcy Code or to deny the Debtor a discharge pursuant to section 727 of the Bankruptcy
21 Code.

22 **XII.**

23 **LIMITATION OF LIABILITY**

24 **12.1 No Liability for Solicitation or Participation.** As specified in section 1125(e) of
25 the Bankruptcy Code, entities that solicit acceptances or rejections of this Plan, in good faith and in
26 compliance with the applicable provisions of the Bankruptcy Code, shall not be liable, on account
27 of such solicitation or participation, for violation of any applicable law, rule, or regulation
28

1 governing the solicitation of acceptances or rejections of this Plan or the offer, issuance, sale, or
2 purchase of securities with respect to this Plan.

3 **12.2 Good Faith.** Confirmation of this Plan shall constitute a finding that the Plan was
4 proposed, and that acceptances of the Plan were solicited, in good faith and in compliance with
5 applicable provisions of the Bankruptcy Code.

6 **12.3 Limitation of Liability Regarding Plan.** Effective as of the Effective Date,
7 neither the Committee, the LT Advisory Board, the Liquidation Trustee, nor any of their respective
8 Representatives shall have or incur any liability to any Creditor or holder of an Interest or to the
9 Debtor for any act or omission in connection with or arising out of the Case, including without
10 limitation, the negotiation, preparation and pursuit of confirmation of this Plan, the approval of the
11 Disclosure Statement, the administration of this Plan or the consummation of this Plan (except for
12 any act or omission constituting gross negligence or willful misconduct), to the fullest extent
13 permitted by applicable statutory and case law.

14 **XIII.**

15 **OTHER PLAN PROVISIONS**

16 **13.1 Exemption from Stamp, Transfer and Other Taxes.** Pursuant to section 1146(a)
17 of the Bankruptcy Code, the issuance, transfer, or exchange of assets under this Plan, including,
18 without limitation, the creation of any mortgage, deed of trust, or other security interest, the
19 making or assignment of any lease or sublease, or the making or delivery of any deed or
20 instrument of transfer under, in furtherance of, or in connection with this Plan, shall not be subject
21 to any stamp, real estate transfer, mortgage recording, or other similar tax.

22 **13.2 Post-Effective Date Quarterly Fees.** After the Effective Date, the Liquidation
23 Trustee shall pay, from the Liquidation Trust, all accruing United States Trustee Fees until the
24 entry of a Final Decree.

25 **13.3 Post-Effective Date Status Reports.** The Liquidation Trustee shall file reports
26 regarding the status of implementation of this Plan and regarding the review, prosecution and
27 resolution of Causes of Action, every 120 days following the entry of the Confirmation Order
28

1 through the Case Closing Date, or as otherwise ordered by the Bankruptcy Court. Such reports
2 shall be served on the Post-Effective Date Notice Parties.

3 **13.4 Effectiveness of Court Orders.** Unless otherwise provided by this Plan or by the
4 Confirmation Order, all orders and judgments, including injunctions, entered by the Bankruptcy
5 Court during the Case and in existence on the Confirmation Date shall remain in full force and
6 effect from and after the Effective Date, to the extent not inconsistent with the provisions of this
7 Plan or the Confirmation Order.

8 **13.5 No Admissions.** Nothing contained in this Plan shall be deemed or construed in
9 any manner as an admission by the Debtor with respect to any matter set forth in this Plan,
10 including, without limitation, the amount or allowability of any Claim, or the value of any property
11 of the Estate.

12 Notwithstanding anything to the contrary in this Plan, if this Plan is not confirmed or the
13 Effective Date does not occur, this Plan shall be null and void, and nothing contained in this Plan
14 shall: (a) be deemed to be an admission by the Debtor with respect to any matter discussed in this
15 Plan, including liability on any Claim or the propriety of any classification of a Claim;
16 (b) constitute a waiver or release of any Causes of Action; or (c) prejudice in any manner the rights
17 of the Debtor or the Committee in any action or proceeding.

18 **13.6 Withdrawal of the Plan.** The Debtor reserves the right, subject to the consent of
19 the Committee, to withdraw this Plan before the Confirmation Date.

20 **13.7 Severability of Plan Provisions.** If, before Confirmation, the Bankruptcy Court
21 holds that any term or provision of this Plan is invalid, void, or unenforceable, the Bankruptcy
22 Court may alter or interpret that term or provision so that it is valid and enforceable to the
23 maximum extent possible consistent with the original purpose of that term or provision. However,
24 such term or provision, as altered or interpreted by the Bankruptcy Court, shall be effective in this
25 Plan, and the remaining terms and provisions of this Plan shall remain in full force and effect and
26 shall not be affected, impaired, or invalidated in any manner. The Confirmation Order shall
27 constitute a judicial determination that each term and provision of this Plan, as it may have been
28 altered or interpreted in accordance with this Section 13.7 is valid and enforceable under its terms.

1 **13.8 Governing Law.** The rights and obligations arising under this Plan, and any
2 agreements, contracts, documents, or instruments executed in connection with this Plan shall be
3 governed by, and construed and enforced in accordance with, California law without giving effect
4 to conflict of law principles under California law, unless a rule of law or procedure is supplied by:
5 (a) federal law (including, without limitation, the Bankruptcy Code or the Federal Bankruptcy
6 Rules); or (b) an express choice-of-law provision in any document provided for, or executed under
7 or in connection with, this Plan.

8 **13.9 Retention of Jurisdiction.** After the Effective Date, the Bankruptcy Court shall
9 have, to the fullest extent permitted by the Bankruptcy Code, jurisdiction over any matter related to
10 the Case or this Plan, including, without limitation, with respect to any of the following matters:

11 13.9.1 resolution of any matters related to the assumption and assignment or
12 rejection of any executory contract or unexpired lease hereunder, and to hear, determine
13 and, if appropriate, liquidate, any Claims arising therefrom;

14 13.9.2 entry of such orders as may be appropriate to interpret, enforce,
15 implement or consummate the provisions of this Plan;

16 13.9.3 determination of any and all motions, adversary proceedings,
17 applications, and contested or litigated matters that may be pending on the Effective Date
18 or that, pursuant to this Plan, may be instituted by the Liquidation Trustee or the LT
19 Advisory Board after the Effective Date, including, without limitation, any matters related
20 to Causes of Action;

21 13.9.4 hearing and determining any objections to the allowance of Claims or
22 Administrative Claims, whether filed before or after the Effective Date, including any
23 objections to the classification of any Claim, and any proceedings to allow, disallow,
24 determine, liquidate, estimate, or establish the priority or the secured or unsecured status of
25 any Claim, in whole or in part, or to establish Reserves pending the resolution of Disputed
26 Claims;

27
28

1 13.9.5 entry and implementation of such orders as may be appropriate in the
2 event that the Confirmation Order is, for any reason, stayed, revoked, modified, reversed,
3 or vacated;

4 13.9.6 consideration of any modifications of this Plan, after confirmation of this
5 Plan, and, if in the best interests of Creditors, modification of this Plan after this Plan has
6 been substantially consummated;

7 13.9.7 interpreting and enforcing orders of the Bankruptcy Court, including,
8 without limitation, the cure of any defect or omission, or the reconciliation of any
9 inconsistency, in any order of the Bankruptcy Court, including the Confirmation Order;

10 13.9.8 hearing and determining all applications for awards of compensation
11 for services rendered and reimbursement of expenses incurred prior to the Effective Date,
12 including, without limitation, all Pre-Effective Date Fee Claims of Pre-Effective Date
13 Professionals;

14 13.9.9 hearing and determining disputes arising in connection with, or relating
15 to, this Plan or the interpretation, implementation, or enforcement of this Plan, or the extent
16 of any entity's obligations in connection with this Plan;

17 13.9.10 the recovery of all assets, properties and interests of the Debtor and the
18 Estate, wherever located, including, without limitation, pursuant to any and all Causes of
19 Action;

20 13.9.11 issuance of injunctions or other orders as may be necessary or
21 appropriate to aid in the implementation of this Plan or to restrain interference by the
22 Debtor or by any entity with the consummation or the enforcement of this Plan;

23 13.9.12 hearing and determining matters concerning Taxes and tax refunds, tax
24 attributes, and tax benefits and similar and related matters, with respect to the Debtor, the
25 Estate, or the Liquidation Trust, in accordance with sections 346, 505, and 1146 of the
26 Bankruptcy Code;

27
28

1 13.9.13 hearing and determining any issue or dispute related to the Liquidation
2 Trust Assets, the Debtor, the Committee, the LT Advisory Board, or the Liquidation
3 Trustee;

4 13.9.14 the effectuating of Distributions under, and the performance of, the
5 provisions of this Plan;

6 13.9.15 hearing and determining any other matter deemed relevant to the
7 consummation of this Plan and the administration of the Case;

8 13.9.16 resolution of any disputes arising between any of the Debtor, an Insider
9 of the Debtor or an Affiliate, on one hand, and the Liquidation Trustee, on the other hand,
10 with respect to their respective rights, remedies, interests and properties pursuant to this
11 Plan; and

12 13.9.17 the issuance of a Final Decree.

13 Notwithstanding anything to the contrary contained in the foregoing, in the event that the
14 Bankruptcy Court determines that it is without jurisdiction, or abstains from exercising
15 jurisdiction, over any matter, the provisions of this Section 13.9 shall not affect, control, prohibit,
16 or limit in any manner the exercise of jurisdiction over any such matter by any other court or
17 tribunal that has jurisdiction over such matter.

18 **13.10 Successors and Assigns.** Except as provided expressly to the contrary in this
19 Plan, the rights, benefits, and obligations of any entity referred to in this Plan shall be binding on,
20 and shall inure to the benefit of, any heir, executor, administrator, successor, or assign of that
21 entity.

22 **13.11 Business Day.** If any payment or act under this Plan is required to be made or
23 performed on a day that is not a Business Day, then the payment or act may be completed on the
24 next succeeding day that is a Business Day, in which event the payment or act shall be deemed to
25 have been completed on the required day.

26 **13.12 No Waiver.** Except as provided expressly to the contrary in this Plan, neither any
27 failure to list a Claim in the Bankruptcy Schedules filed by the Debtor, any failure to object to any
28 Claim for purposes of voting, any failure to object to a Claim or Administrative Claim prior to the

1 Effective Date, any failure to assert a Cause of Action prior to the Effective Date, nor any action or
2 inaction of the Debtor or the Committee with respect to a Claim, Administrative Claim, or Cause
3 of Action, other than a legally effective express written waiver or release, shall be deemed to be a
4 waiver or release of the right of the Liquidation Trustee under this Plan to (a) object to or examine
5 such Claim or Administrative Claim, in whole or in part, or (b) retain and assert, pursue, prosecute,
6 litigate, or otherwise enforce any Cause of Action.

7 **13.13 Post-Effective Date Notice.** From and after the Effective Date, any entity that
8 desires to obtain notice of any pleading or document filed in the Case, or of any hearing in the
9 Bankruptcy Court, or of any matter as to which notice is to be provided under this Plan, must file a
10 request for post-Effective Date notice and serve such request on the Liquidation Trustee and its
11 counsel; provided, however, that the United States Trustee, the LT Advisory Board, and the
12 Liquidation Trustee each shall be deemed to have requested such post-Effective Date notice.

13 **13.14 Modification of this Plan.** At any time prior to the confirmation of this Plan, the
14 Debtor may supplement, amend or modify this Plan in accordance with section 1127(a) of the
15 Bankruptcy Code. After confirmation of this Plan, the Debtor may (a) apply to the Bankruptcy
16 Court to modify this Plan, notwithstanding any substantial consummation of this Plan if such
17 modification is in the best interests of Creditors, and (b) apply to the Bankruptcy Court to remedy
18 defects or omissions in this Plan or to reconcile inconsistencies in this Plan.

19 **13.15 Nonconsensual Confirmation.** The Debtor hereby requests that the Bankruptcy
20 Court confirm this Plan in accordance with the “cram down” provisions of section 1129(b) of the
21 Bankruptcy Code, notwithstanding any rejection of this Plan by Creditors holding Claims in
22 Classes 1 through 5 and the deemed rejection of this Plan by the holder of the Claim in Class 6 and
23 the Interest in Class 7. In the event that (as expected) no vote is cast with respect to this Plan by a
24 Class 2, Class 3 or Class 4 Creditor, such Class shall be deemed to be eliminated from this Plan.
25 Subject to the provisions of Section 13.14 hereof, the Debtor hereby reserves the right to modify
26 this Plan in accordance with section 1127 of the Bankruptcy Code and Section 13.14 of this Plan in
27 connection with Confirmation proceedings with respect to this Plan, and, unless the Bankruptcy
28 Court should determine that such modification affects materially adversely the treatment of any

1 Class of Creditors established by this Plan, such modification of this Plan may be effectuated
2 without the need to amend the Disclosure Statement or to re-solicit votes with respect to this Plan.

3 **13.16 Other Documents and Actions.** The Debtor, the Committee and the Liquidation
4 Trustee may execute such documents and take such actions as may be necessary or appropriate to
5 effectuate the transactions contemplated under this Plan.

6 **13.17 Notices.** Except as provided expressly to the contrary in this Plan, after the
7 Effective Date of this Plan, all notices and requests in connection with this Plan shall be in writing
8 and shall be hand delivered, sent by e-mail transmission or sent by telefacsimile, with a copy sent
9 by first-class mail, addressed to the Liquidation Trustee and to its counsel at the addresses that will
10 be set forth in the Confirmation Order.

11 All notices to any Creditor shall be sent to it at its last known address or to the last known
12 address of its attorney of record. Any such Creditor may designate in writing any other address for
13 the purpose of this Section 13.17, which designation shall be effective on receipt thereof by the
14 Liquidation Trustee.

15 Service of any notice or request shall be deemed to be effective on the date delivered or
16 sent if delivered or sent in accordance with the provisions of this Section 13.17.

17 **13.18 Inconsistencies.** In the event that any provisions of this Plan are inconsistent
18 with the provisions of the Disclosure Statement, the provisions of this Plan shall control.

19 **13.19 Changes in Rates Subject to Regulatory Commission Approval.** The Debtor
20 is not subject to governmental regulatory commission approval of any rates.

21 **13.20 Modification/Superseding of Loan and Security Agreements.** Except as
22 provided expressly to the contrary in this Plan, from and after the Effective Date, all loan
23 documents, security documents, Liens, promissory notes, indemnity agreements, surety
24 agreements, purchase orders, invoices, and other comparable agreements and contracts
25 (collectively, "**Loan Documents**"), documenting Claims against the Debtor, shall be deemed
26 modified or superseded completely, as the case may be, by the terms of this Plan. Upon the
27 Effective Date, any defaults under such Loan Documents shall be deemed cured as of the Effective
28 Date. After the Effective Date, Claims shall be paid only in accordance with the terms of this Plan,

1 and any effort by any Creditor to compel any payment to it of more than its Allowed Claim, or the
2 payment of its Claim in any manner other than as provided in this Plan, shall constitute a violation
3 of the Confirmation Order and section 1141 of the Bankruptcy Code.

4 **13.21 Implementation of Section 1142 of the Bankruptcy Code.** Pursuant to
5 section 1142(a) of the Bankruptcy Code, the Liquidation Trustee is authorized to carry out the
6 terms of this Plan. Pursuant to section 1142(b) of the Bankruptcy Code, the Debtor and all
7 Creditors shall execute and deliver, or join in the execution and delivery of, any instrument or
8 document appropriate to effectuate this Plan, and to perform any other act that is appropriate for
9 the consummation of this Plan. To the extent that the Debtor or any Creditor fails to comply with
10 these provisions, the Liquidation Trustee shall be entitled to obtain, on an expedited basis, an order
11 of the Bankruptcy Court compelling the Debtor and/or such Creditor's compliance with these
12 provisions, and the Debtor and/or such Creditor shall be responsible for all costs and damages
13 incurred by the Liquidation Trustee or the Liquidation Trust as a result of the Debtor's and/or such
14 Creditor's non-compliance with these provisions. During the time period encompassed by any
15 Creditor's non-compliance with these provisions, no payment shall be made to such Creditor under
16 this Plan.

17 **13.22 Implementation of Section 1145 of the Bankruptcy Code.** Although the
18 Debtor intends that the Liquidation Trust Interests shall not be "securities" under applicable laws,
19 if such Liquidation Trust Interests are securities, they shall be exempt from registration under
20 section 1145 of the Bankruptcy Code and under applicable securities laws.

21 **XIV.**

22 **RECOMMENDATION AND CONCLUSION**

23 The Debtor believes that confirmation of this Plan is in the best interests of Creditors
24 because, in the Debtor's view, this Plan will provide to Creditors a favorable recovery on their

25 ///

26

27

28

1 Allowed Claims and represents the best alternative available to Creditors under the circumstances
2 of the Case. Accordingly, the Debtor urges Creditors to vote to accept this Plan.

3 DATED: September 30, 2013

WALLDESIGN, INC.

4 

5 By: _____
6 Name: Brian Weiss
7 Its: Chief Restructuring Officer

8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT

“10.1” Executory Contracts and Unexpired Leases to be assumed

Walldesign, Inc.

Schedule of Executory Contracts to Reject

Party	Description of Contract to Reject
Imperial Building Group 2350 SE Bristol St. Newport Beach, CA 92660	Labor Agreement dated December 29, 2011
International Union of Painters & Allied Trades District Council 15, Local Union 159 c/o Weinberg, Roger & Rosenfeld Jordan D. Mazur, Esq. 1001 Marina Village Parkway, #200 Alameda, CA 945011	Memorandum of Understanding Regarding Light Commercial and Multi Family Residential Work For work in Las Vegas and surrounding Clark County area
Pitney Bowes Global Fin Srv Attn: Corporate Officer P.O. Box 371887 Pittsburgh, PA 15250-7887	Postage Machine lease
RU Investments 2350 SE Bristol Newport Beach, CA 92660	Non-residential real property lease for business premises located at: 5940 Key Court, Loomis, CA 139 Radio St., Corona, CA 6650 Meany Avenue, Bakersfield, CA 4760 E. Cartier, Las Vegas, NV 100 Hamilton Street, Chandler, AZ 2550 Jason Court, Oceanside, CA 1900 Quail St, Newport Beach, CA 2350 S.E. Bristol Street, Newport Beach, CA

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 660 Newport Center Drive, 4th Floor, Newport Beach, CA 92660.

A true and correct copy of the foregoing document entitled: **DEBTOR'S CHAPTER 11 PLAN OF LIQUIDATION** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On September 30, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on September 30, 2013, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Attorney Service - Bin outside of Room 5097
Honorable Catherine E. Bauer
Ronald Reagan Federal Bldg.
411 W. Fourth St.
Santa Ana, CA 92701

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

September 30, 2013	Viann Corbin	/s/ Viann Corbin
<i>Date</i>	<i>Printed Name</i>	<i>Signature</i>

NEF SERVICE LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Marc Andrews sandra.g.mcmasters@wellsfargo.com
- Raymond Babaian rbabaian@wshblaw.com, cortiz@wshblaw.com;mmontgomery@wshblaw.com;asergison@wshblaw.com;asession@wshblaw.com
- Raymond Babaian rbabaian@wshblaw.com, cortiz@wshblaw.com;mmontgomery@wshblaw.com;asergison@wshblaw.com;asession@wshblaw.com
- Richard W Brunette rbrunette@sheppardmullin.com
- Phillip Chan stephanie.rickey@knchlaw.com, stephanie.rickey@knchlaw.com
- Ronald Clifford rclifford@blakeleyllp.com, ecf@blakeleyllp.com;seb@blakeleyllp.com
- Dawn M Costa dcosta@jslex.com
- Jon L Dalberg jdalberg@lgbfirm.com, ncereseto@lgbfirm.com;marizaga@lgbfirm.com;scolen@lgbfirm.com
- Mark D Erickson , kelley.saunders@haynesboone.com
- Gina M Fornario gfornario@nixonpeabody.com
- Marc C Forsythe kmurphy@goeforlaw.com, mforsythe@goeforlaw.com
- Dewain D Fox dfox@shermanhoward.com, kelms@shermanhoward.com
- Robert P Goe kmurphy@goeforlaw.com, rgoe@goeforlaw.com;mforsythe@goeforlaw.com
- Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- Kavita Gupta kgupta@guptaferrer.com
- Brian T Harvey bharvey@buchalter.com, IFS_filing@buchalter.com;rreeder@buchalter.com
- Ronald S Hodges rhodges@shbllp.com, tlenz@shbllp.com
- Garrick A Hollander ghollander@winthropcouchot.com, pj@winthropcouchot.com;vcorbin@winthropcouchot.com;chipp@winthropcouchot.com
- Jill M Holt Golubow jgolubow@winthropcouchot.com, pj@winthropcouchot.com;vcorbin@winthropcouchot.com
- Troy L Isaacson tisaacson@mic-law.com
- Jeffrey S Kaufman Jeffrey.Kaufman@ndlf.com, maureen.gledhill@ndlf.com
- Jeannie Kim jkim@winthropcouchot.com, vcorbin@winthropcouchot.com;pj@winthropcouchot.com
- Ivette Kincaid ikincaid@ut-law.com, ikincaid@ut-law.com
- Trevor Knopf tknopf@prindlelaw.com, amota@prindlelaw.com
- Steven M Koch smk@thecalifornialawyers.com
- David S Lee dlee@lee-lawfirm.com
- Sidney P Levinson slevinson@jonesday.com, kfloyd@ecf.inforuptcy.com;kfloyd@jonesday.com
- Peter W Lianides plianides@winthropcouchot.com, pj@winthropcouchot.com;vcorbin@winthropcouchot.com
- Denish Mandalia denish.mandalia@gmail.com, rhonda.persiani@knchlaw.com
- David M Mannion DMannion@BlakeleyLLP.com, ECF@BlakeleyLLP.com
- Daryl E Martin dem@cjmlv.com, kbc@cjmlv.com
- Jordan D Mazur jmazur@unioncounsel.net
- Joshua M Mester jmester@jonesday.com
- Andrew K Murphy amurphy@clappmoroney.com, ycardenas@clappmoroney.com
- John E Nuelle jnuelle@greenhall.com
- R G Pagter gibson@pagterandmiller.com, pandm@pagterandmiller.com;pagterandmiller@yahoo.com
- Robin E Paley paleylawoffices@gmail.com
- Eric S Pezold epezold@swlaw.com, dwlewis@swlaw.com
- Hanna B Raanan hraanan@marlinsaltzman.com, jhawkes@marlinsaltzman.com;smcgrath@marlinsaltzman.com;irvinefileclerk@marlinsaltzman.com
- Christian L Raisner bankruptcycourtnotices@unioncounsel.net, craisner@unioncounsel.net
- Jack A Reitman jareitman@lgbfirm.com
- John P Reitman jreitman@lgbfirm.com, scolen@lgbfirm.com;marizaga@lgbfirm.com;vedwards@lgbfirm.com;rmartin-patterson@lgbfirm.com;kalandy@lgbfirm.com;echulpaeff@lgbfirm.com
- Melissa J Rhee mrhee@palumbolawyers.com
- Christopher O Rivas crivas@reedsmith.com
- Anthony J Rothman anthony@arothmanlaw.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Ronald Rus rrus@rusmiliband.com
- Nanette D Sanders becky@ringstadlaw.com
- Valerie J Schratz vschratz@greenhall.com
- Leonard M Shulman lshulman@shbllp.com
- Jodi Siegner jsiegner@deconsel.com
- Sarah E Singer ssinger@lorberlaw.com
- Samantha A Smith ssmith@marlinsaltzman.com, kdodson@marlinsaltzman.com
- United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov
- Jennifer H Wang jwang@cookseylaw.com, jodom@cookseylaw.com
- Johnny White JWhite@wrslawyers.com
- Rachel Wilson rachel@rachelwilsonlaw.com, katherine@rachelwilsonlaw.com
- Marc J Winthrop mwinthrop@winthropcouchot.com,
pj@winthropcouchot.com;vcorbin@winthropcouchot.com
- Jason R Wolf jrwolf@jonesday.com
- Kirsten A. Worley kw@wlawcorp.com, admin@wlawcorp.com

PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is: 660 Newport Center Drive, 4th Floor, Newport Beach, CA 92660.

A true and correct copy of the foregoing document entitled: **DISCLOSURE STATEMENT DESCRIBING CHAPTER 11 LIQUIDATING PLAN** will be served or was served (a) on the judge in chambers in the form and manner required by LBR 5005-2(d); and (b) in the manner stated below:

1. TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF): Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On September 30, 2013, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

Service information continued on attached page

2. SERVED BY UNITED STATES MAIL: On _____, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL (state method for each person or entity served): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on September 30, 2013, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

Via Attorney Service - Bin outside of Room 5097
Honorable Catherine E. Bauer
Ronald Reagan Federal Bldg.
411 W. Fourth St.
Santa Ana, CA 92701

Service information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

September 30, 2013	Viann Corbin	/s/ Viann Corbin
<i>Date</i>	<i>Printed Name</i>	<i>Signature</i>

NEF SERVICE LIST

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Marc Andrews sandra.g.mcmasters@wellsfargo.com
- Raymond Babaian rbabaian@wshblaw.com,
cortiz@wshblaw.com;mmontgomery@wshblaw.com;asergison@wshblaw.com;asession@wshblaw.com
- Raymond Babaian rbabaian@wshblaw.com,
cortiz@wshblaw.com;mmontgomery@wshblaw.com;asergison@wshblaw.com;asession@wshblaw.com
- Richard W Brunette rbrunette@sheppardmullin.com
- Phillip Chan stephanie.rickey@knchlaw.com, stephanie.rickey@knchlaw.com
- Ronald Clifford rclifford@blakeleyllp.com, ecf@blakeleyllp.com;seb@blakeleyllp.com
- Dawn M Costa dcosta@jslex.com
- Jon L Dalberg jdalberg@lgbfirm.com,
ncereseto@lgbfirm.com;marizaga@lgbfirm.com;scolen@lgbfirm.com
- Mark D Erickson , kelley.saunders@haynesboone.com
- Gina M Fornario gfornario@nixonpeabody.com
- Marc C Forsythe kmurphy@goeforlaw.com, mforseythe@goeforlaw.com
- Dewain D Fox dfox@shermanhoward.com, kelms@shermanhoward.com
- Robert P Goe kmurphy@goeforlaw.com, rgoe@goeforlaw.com;mforseythe@goeforlaw.com
- Nancy S Goldenberg nancy.goldenberg@usdoj.gov
- Kavita Gupta kgupta@guptaferrer.com
- Brian T Harvey bharvey@buchalter.com, IFS_filing@buchalter.com;rreeder@buchalter.com
- Ronald S Hodges rhodges@shbllp.com, tlenz@shbllp.com
- Garrick A Hollander ghollander@winthropcouchot.com,
pj@winthropcouchot.com;vcorbin@winthropcouchot.com;chipp@winthropcouchot.com
- Jill M Holt Golubow jgolubow@winthropcouchot.com,
pj@winthropcouchot.com;vcorbin@winthropcouchot.com
- Troy L Isaacson tisaacson@mic-law.com
- Jeffrey S Kaufman Jeffrey.Kaufman@ndlf.com, maureen.gledhill@ndlf.com
- Jeannie Kim jkim@winthropcouchot.com, vcorbin@winthropcouchot.com;pj@winthropcouchot.com
- Ivette Kincaid ikincaid@ut-law.com, ikincaid@ut-law.com
- Trevor Knopf tknopf@prindlelaw.com, amota@prindlelaw.com
- Steven M Koch smk@thecalifornialawyers.com
- David S Lee dlee@lee-lawfirm.com
- Sidney P Levinson slevinson@jonesday.com, kfloyd@ecf.inforuptcy.com;kfloyd@jonesday.com
- Peter W Lianides plianides@winthropcouchot.com,
pj@winthropcouchot.com;vcorbin@winthropcouchot.com
- Denish Mandalia denish.mandalia@gmail.com, rhonda.persiani@knchlaw.com
- David M Mannion DMannion@BlakeleyLLP.com, ECF@BlakeleyLLP.com
- Daryl E Martin dem@cjmlv.com, kbc@cjmlv.com
- Jordan D Mazur jmazur@unioncounsel.net
- Joshua M Mester jmester@jonesday.com
- Andrew K Murphy amurphy@clappmoroney.com, ycardenas@clappmoroney.com
- John E Nuelle jnuelle@greenhall.com
- R G Pagter gibson@pagterandmiller.com, pandm@pagterandmiller.com;pagterandmiller@yahoo.com
- Robin E Paley paleylawoffices@gmail.com
- Eric S Pezold epezold@swlaw.com, dwlewis@swlaw.com
- Hanna B Raanan hraanan@marlinsaltzman.com,
jhawkes@marlinsaltzman.com;smcgrath@marlinsaltzman.com;irvinefileclerk@marlinsaltzman.com
- Christian L Raisner bankruptcycourtnotices@unioncounsel.net, craisner@unioncounsel.net
- Jack A Reitman jareitman@lgbfirm.com
- John P Reitman jreitman@lgbfirm.com,
scolen@lgbfirm.com;marizaga@lgbfirm.com;vedwards@lgbfirm.com;rmartin-
patterson@lgbfirm.com;kalandy@lgbfirm.com;echulpaeff@lgbfirm.com
- Melissa J Rhee mrhee@palumbolawyers.com
- Christopher O Rivas crivas@reedsmith.com

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

- Anthony J Rothman anthony@arothmanlaw.com
- Ronald Rus rrus@rusmiliband.com
- Nanette D Sanders becky@ringstadlaw.com
- Valerie J Schratz vschratz@greenhall.com
- Leonard M Shulman lshulman@shbllp.com
- Jodi Siegner jsiegner@deconsel.com
- Sarah E Singer ssinger@lorberlaw.com
- Samantha A Smith ssmith@marlinsaltzman.com, kdodson@marlinsaltzman.com
- United States Trustee (SA) ustpregion16.sa.ecf@usdoj.gov
- Jennifer H Wang jwang@cookseylaw.com, jodom@cookseylaw.com
- Johnny White JWhite@wrslawyers.com
- Rachel Wilson rachel@rachelwilsonlaw.com, katherine@rachelwilsonlaw.com
- Marc J Winthrop mwinthrop@winthropcouchot.com,
pj@winthropcouchot.com;vcorbin@winthropcouchot.com
- Jason R Wolf jrwolf@jonesday.com
- Kirsten A. Worley kw@wlawcorp.com, admin@wlawcorp.com